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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION, INC. FOR AN ADJUSTMENT OF RATES	)))	Case No. 2012-00535

ATTORNEY GENERAL'S RESPONSES TO DISCOVERY REQUESTS OF KENTUCKY PUBLIC SERVICE COMMISSION

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and states as follows for his responses to the data requests of the Kentucky Public Service Commission staff.

Respectfully submitted,
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Certificate of Service and Filing

Counsel certifies that the responses set forth herein are true and accurate to the best of his knowledge, information, and belief formed after a reasonable inquiry. Counsel further certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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this 7th day of June, 2013

Assistant Attorney General

Data Requests Relating to Testimony of Bion Ostrander

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 1
Page 1 of 4

Refer to pages 23-43 and Exhibit BCO-2, Schedule A-3, of the Direct Testimony of Bion C. Ostrander ("Ostrander Testimony") regarding Mr. Ostrander's proposed adjustment to reduce "significant pay increases" granted by Big Rivers Electric Corporation ("Big Rivers").

a. The testimony references pay increases awarded since 2009. Explain in detail why historical amounts that were included in the revenue increase awarded by the Commission in Big Rivers' 2011 rate case should now be disallowed.

b. The second line of the box in the upper right portion of page 2 of 3 of the exhibit deducts what is identified as "Officer's FTP payroll above" in the amount of $872,537. Provide an explanation, along with any relevant calculations, of what this amount represents and how it was derived.

c. Refer to the box in the upper right portion of page 2 of 3 and Note 5 on page 3 of 3 of the exhibit. The amount of pay increases that Mr. Ostrander proposes to remove is $1,129,305. Note 5 indicates that the pay increases for this adjustment are "Management average pay increases of 6.40% in 2009 and 7.08% in 2011, and non-Management pay increases that were 4.56% in 2009." Provide a breakdown of the $1,129,395 which shows separately the amounts associated with each of these three pay increases.

RESPONSE:

a. It is Mr. Ostrander's experience that each rate case stands on its own merits, subject to evaluation of new adjustments and issues or previously existing adjustments and issues that were not raised or litigated in a prior case. Also, each revenue requirement component is subject to review in each rate case, there is no specific presumption or language included in statutes or Commission rules which states that certain costs or rate base items are off-limits or cannot be reviewed in each stand-alone rate case, even if such costs were specifically or indirectly approved in a prior rate case. For example, the entire rate base is always subject to review in each stand-alone rate case, not just the incremental increase in rate base since the prior rate case proceeding.

It does not appear that the significant/excessive unsupported permanent payroll increases for Officers and Other employees that are removed by Mr. Ostrander's adjustment in this rate case were specifically addressed in the prior rate case, Case No. 2011-00036. This adjustment is not intended to remove the more normal recurring payroll increases in the range of 1% to 3% per year. It does not appear that BREC volunteered or raised these specific payroll issues in proposed adjustments. Also, it does not appear that these matters were specifically raised by other intervenors. In addition, the Commission orders in Case No. 2011-00036 (November 17, 2011 Order, January 29, 2013 Order, and the February 21, 2013 Order) do not mention that the Commission specifically approved or disapproved these significant permanent payroll increases (although it can be inferred that the amounts were indirectly approved by virtue of being included in the total approved costs of the Company).

However, some of these same matters were addressed when BREC filed an application for emergency rate relief in Case No. 2009-00040, as addressed at Mr. Ostrander's Direct Testimony, pages 27 and 28, and footnote 12. BREC sought recovery, among other things, of reimbursement for $441,000 in bonus payments to 84 employees, and the Commission's final order (dated August 14, 2009, at page 2) sharply criticized BREC for asking ratepayers to pay for bonuses during a period of extraordinary financial hardship.

Finally, these significant/excessive unsupported permanent payroll increases may not have been raised or addressed in prior rate cases if BREC failed to provide this information in response to data requests, which is the case in this proceeding as addressed at Mr. Ostrander's Direct Testimony, pages 28 to 30, and footnote 14.

b. The corresponding Excel spreadsheet field that includes the $872,537 shows a formula which shows this amount consists of Mr. Bailey's FTP end August 31, 2014 payroll at column I, line 14, and Mr. Berry's FTP end August 31, 2014 payroll at column I, line 35. These two Officer's payroll amounts were deducted from $19,695,793 so that the remaining payroll amount of $18,823,256 consisted of Exempt payroll only, without Officer's pay included (and also without Union employee's payroll included). And then a separate adjustment was made to remove 6% of payroll related Exempt payroll (also identified as Management/Nonmanagement), which is shown at column K, line 11 and included in the total adjustment at column F, line 6. Therefore, the total payroll adjustment consists of two pieces: 1) Officer; and 2) Nonofficer/Exempt.

c. Mr. Ostrander addresses this adjustment for Nonofficer/Exempt (also called Management/Nonmanagement, which also excludes Union employees payroll) at page 36, lines 10 to 17, and page 37, lines 1 to 7. Again, this adjustment is only to remove the <u>significant/excessive unsupported permanent payroll increases,</u> and not remove the more normal recurring payroll increases in the range of 1% to 3% per year. Mr. Ostrander's adjustment is a conservative estimate and would have likely been a greater amount if BREC would have provided the actual payroll increases for each year, as he states at page 37, lines 4 to 6. It is Mr. Ostrander's intent to only remove the "significant/excessive" unsupported incremental payroll increases above the more normal payroll increases of 1% to 3% per year for both 2009 and 2010 (page 36, lines 16 to 17, and page 37, line 1).

BREC indicated that the 2009 average pay increases were about 6% (consisting of Management average pay increase of 6.40% and Nonmanagement average pay increase of 4.56%), and the 2010 average pay increases were approximately 7.08%. Thus, for 2009, the incremental pay increases to be removed should be approximately **<u>3%</u>** (excess of actual significant 6% pay increase over the more normal recurring pay increases of 3%), and for 2010, the incremental pay increases to be removed should be **<u>4.08%</u>** (excess of actual significant 7.08% pay increase over the more normal recurring pay increases of 3%). Thus, Mr. Ostrander could have multiplied the **<u>3%</u>** excessive 2009 pay increase by the related payroll levels, and multiplied the **<u>4.08%</u>** excessive 2010 pay increase by the related payroll levels and added both of these amounts together to arrive at his adjustment.

However, for simplicity purposes, Mr. Ostrander added the **3%** 2009 excessive pay increase and **4.08%** 2010 excessive pay increase together to get a total excessive pay increase of **7.08%**, and then rounded this down to 6% for conservative purposes (this is the 6% reflected at Note 5 and at Schedule A-3, column K, line 9 of this part of the payroll adjustment). Finally, Mr. Ostrander multiplied the 6% by the FTP August 31, 2014 Exempt/Nonofficer payroll at Schedule A-7, column E, line 1 to arrive at his final adjustment of $1,129,395 related to Exempt/Nonofficer payroll.

A more precise (and likely larger) payroll adjustment could have been calculated if OAG would have been provided the specific payroll information that it requested.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 2

Refer to pages 52-67 of the Ostrander Testimony and Exhibit BCO-2, Schedule A-6 regarding the proposed adjustment to reduce Big Rivers' estimated rate case expenses. Explain whether Mr. Ostrander is aware of the Commission's general policy to allow recovery by utilities of actual rate case expenses incurred through the month that the formal hearing is conducted.

RESPONSE:

Mr. Ostrander believes that regardless of any such general policy pertaining to any true-up of estimated rate case expenses through the month of the formal hearing, his rate case expense adjustment is justified by the excessive and unreasonable nature of BREC's proposed rate case expense in this proceeding. It is Mr. Ostrander's experience that each rate case should stand on its own merits, subject to objective evaluation of new facts and circumstances. In the last rate case, it appears the Commission's denial of certain law firm expenses on the basis of being excessive and unreasonable may at least arguably have constituted a departure from the Commission's general policy in this regard. Mr. Ostrander has also proposed this same adjustment at pages 57 to 60 of his Direct Testimony. Also, BREC has not proved that all of its significant forecasted/estimated rate case expense for FTP August 2014 is actually related to this rate case expense, versus some expenses related to non-rate case activity in the past and in the future. The OAG believes that the burden is on BREC to justify its excessive and unreasonable rate case expenses, regardless of the Commission's general policy in this regard.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 3

Refer to page 6, lines 19-22, of the Ostrander Testimony. With the recommendation of no revenue increase, for how long would Big Rivers be able to continue paying all of its existing debt and its existing financial obligations?

RESPONSE:

The response to this question depends upon the various amounts and assumptions which have changed throughout this proceeding, and will continue to change in the future and be a moving target. This includes the status of future significant bonus/retention/payroll increases, status of the Smelters, the idling of Wilson or other plants and related impacts on reductions in employees and other costs, levels of construction activity, the amount of maintenance deferred or not deferred, changes in debt levels/re-financing, the failure to include the financial impact of the loss of the Alcan smelter's load into the fully forecasted test year of this case, and other matters. It also depends upon the credibility and accuracy of BREC's changing forecasts. This will also depend on how, or if, the Commission allows BREC to use its reserve funds. It is very difficult to know the answer to this question with any reasonable level of certainty, especially when BREC is not willing to provide data request responses related to some of these issues.

Subject to the above information, the most recent information that OAG has regarding BREC's estimated cash flow situation is BREC's March 5, 2013 dated response from hearings in Case No. 2012-00492, which is a revised version of the edited January 24, 2013 KPMG memorandum (Attorney General, Q-3,Attachment 1) that reflects the corrections that Ms. Richert verbally gave to KPMG and which she testified to at the February 28, 2013 hearing (Response to Hearing Item 1 - Witness Billie J. Richert). This analysis shows that with BREC's proposed rate increase, the Company will have positive cash and cash equivalents of $38.7 million (without Transition Reserve) or $73.70 million (with Transition Reserve) at December 31, 2013, with BREC's proposed rate increase.

The information at Attorney General, Q-3 from Case No. 2012-00492, Attachment 1, shows the same analysis without BREC's proposed rate increase. This analysis shows that BREC will have negative cash and cash equivalents of $5.4 million (without Transition Reserve) or positive cash and cash equivalents of $30.9 million (with Transition Reserve and reducing capital expenditures to the average of projected 2015/2016 levels) at December 31, 2013.

Data Request Relating to Testimony of Larry Holloway

WITNESS RESPONSIBLE:
Larry Holloway

QUESTION No. 4
Page 1 of 1

Refer to page 20 of the Direct Testimony of Larry W. Holloway wherein Mr. Holloway discusses Big Rivers' proposed 74 percent increase in the Rural class demand charge. Mr. Holloway states that "[a]ssuming Big Rivers' members pass these costs along to the Rural residential and small commercial customers in the same fashion, this will result in a much larger rate impact for those customers with lower than average load factors." Refer also to page 21 of the testimony which states that should Big Rivers' member cooperatives "[p]ass through the same magnitude of demand charge increase Big Rivers is advocating for the Rural customer class, the net effect on small businesses, schools and churches among others would certainly not seem gradual." State whether Mr. Holloway is aware that all Big Rivers' members have proposed to pass through the wholesale increase on a proportional basis to each rate class and within each rate class, and therefore, retail demand charges would not increase by a magnitude comparable to the 74 percent demand charge increase.

RESPONSE:

Mr. Holloway is not aware of how Big Rivers' members propose to recover Big River's proposed rate increase in their retail rates. However it is important to note that even for customer classes that currently only have a customer charge and an energy charge, recovery of the demand revenue Big Rivers assesses for the entire class will undoubtedly end up with large increases in customer charges and energy charges. Big Rivers' members currently appear to have demand charges for small non-residential customers with 3-phase service. A proportional demand rate increase for these small commercial customers, schools, etc., will likely result in a much larger than the class average percentage increase in many of these customers' monthly bills.

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ATTORNEY GENERAL'S RESPONSES TO DISCOVERY REQUESTS OF BIG RIVERS ELECTRIC CORPORATION, INC.

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and states as follows for his responses to the data requests of Big Rivers Electric Corporation.

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Certificate of Service and Filing

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this 7th day of June, 2013

Assistant Attorney General

General Data Requests

WITNESS RESPONSIBLE:
David Brevitz, Bion Ostrander, Larry Holloway and Counsel

QUESTION No. 1
Page 1 of 1

With respect to each of your witnesses, identify the witness's specific experience (by proceeding caption and case number) testifying in rate cases in which the utility supported its application by a fully-forecasted test year. Identify the party on whose behalf each witness testified in those proceedings, and provide a copy of any written testimony of such witness in such case.

RESPONSE:

It is the witnesses' experience that it is unusual to use a fully forecasted test year in a rate application. Mr. Ostrander has participated in a number of rate cases using a partially forecasted test year that is trued up to actual prior to the end of the rate case. Mr. Brevitz has also participated in rate cases using a partially forecasted test period. None of the witnesses have participated in a rate application using a fully forecasted test year.

Data Requests Relating to Testimony of David Brevitz

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 2
Page 1 of 1

Refer to the Direct Testimony of David Brevitz at page 16, lines 1-3, where Mr. Brevitz states, "This is a notable departure from unanimous support for actions by a cooperative, which I understand to be the normal practice for governance of a cooperative." Please provide all analyses, studies, and other documents relied upon by Mr. Brevitz in reaching that understanding.

RESPONSE:

Mr. Brevitz's testimony designated as confidential the passage to which counsel for Big Rivers refers in this question and surrounding discussion as confidential due to its source in Big Rivers' response to AG 1-38 which BREC claimed as confidential. The immediately following sentence in Mr. Brevitz's testimony goes on to state that "a word search of the minutes for 'opposed' (also, 'against' and 'not in favor') indicates these votes are the *only* votes in which there were votes opposed." [Emphasis added][1] These board minutes total 870 pages, spanning three years. Mr. Brevitz's statement relied upon these facts and his experience working with cooperatives for many years in Kansas. There are no "analyses, studies, and other documents" relied upon for this statement.

[1] Counsel for Big Rivers and the Attorney General agreed that these two sentences from Mr. Brevitz's testimony need not be kept confidential.

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 3
Page 1 of 1

Refer to the Direct Testimony of David Brevitz at page 18, line 4. Please provide the basis for Mr. Brevitz' conclusion that Big Rivers' debt is "significant" compared to equity.

a. Has Mr. Brevitz compared Big Rivers' debt to equity ratio to that of other generation and transmission cooperatives? If so, please provide all such comparisons. If not, please explain why Mr. Brevitz did not perform such a comparison.

b. Provide all studies and other documents that Mr. Brevitz relied upon in reaching his conclusion.

RESPONSE:

The cited statement reads in full as "BREC operates with a significant amount of debt as compared to equity." The testimony at the end of the page calculates an end-of-year debt ratio of 68%.

a. Mr. Brevitz reviewed the "Equity to Capitalization" information provided by Big Rivers in response to PSC 2-8(a), in the G&T Accounting and Finance Association 2012 Annual Directory, but did not perform any other comparisons to other cooperatives since this was not the point of the comparison. BREC's debt leverage is significant as is becoming evident with its "precarious financial position." Higher debt leverage is feasible only for entities which have stable sales and stable sales margins. Highly leveraged entities with unstable sales and sales margins are in "precarious financial condition." Any comparison to other generation and transmission cooperatives should be limited to comparable entities with 60% or more of load served taken by two large industrial customers in the same industry, and a significant dependence on margins from off-system sales. Mr. Brevitz has not identified any such G&T cooperative.

b. Not applicable.

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 4
Page 1 of 1

Refer to the Direct Testimony of David Brevitz at page 19, lines 4-6. Please provide all analyses, studies, and other documents upon which Mr. Brevitz relies in concluding that Big Rivers "faces the risk of higher interest expense...in connection with future financing."

RESPONSE:

The cited statement reads in full: "BREC faces the risk of higher interest expense where variable interest rates apply and in connection with future financing." This statement is based on general knowledge and education in finance, as well as ongoing reading of various analyses including those published in *The Wall Street Journal* which makes clear that current interest rates are being kept artificially low by policies and actions implemented by the Federal Reserve. At some point the Federal Reserve will abate its policies and actions which are keeping interest rates artificially low and interest rates will increase to levels consistent with historical interest rate levels.

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 5

Refer to the Direct Testimony of David Brevitz at page 21, line 4. Please identify and describe in detail each of the "various exigencies" mentioned by Mr. Brevitz. With respect to each such "exigency," explain whether Mr. Brevitz anticipates that the exigency will be alleviated in the event of restructuring or bankruptcy of Big Rivers, and provide a copy of all analyses, studies, and other documents relied upon by Mr. Brevitz to reach that conclusion.

RESPONSE:

Objection to the form of the question. Without waiving this objection, the OAG states as follows. The cited statement reads in full: "BREC faces various exigencies, including exposure to requests for credit enhancements from suppliers, and its options for dealing with these are narrowing over time."

There are a number of urgent matters affecting BREC at the current time due to its "precarious financial condition."

1. BREC was obliged to file this rate case due to an unfavorable outcome of the urgent matter of finding a satisfactory solution to keep the smelters load on the BREC system. The smelters' departure leaves BREC with the same fixed assets and operations, but only one third of the revenue from the remaining rural and large industrial customer base. Sales to this remaining customer base become less stable or dependable as rates increase.

2. BREC is not able to earn margins to cover the cost of this excess capacity by selling power off-system, due to depressed market prices. BREC's projections indicate this is not likely to improve significantly in the foreseeable future.

3. BREC faces substantial uncertainty as to if and when its Mitigation Plan will find new load to replace the smelters, and under best case it will require three to four years to do so.

4. BREC has been deferring maintenance outages "because that was the only option for BREC to meet the minimum margins for interest ratio required by its loan agreements." (Berry Testimony, page 8, line 12.)

5. It will continue to be challenging to catch up on deferred maintenance while meeting minimum margins without smelter revenues.

6. BREC has demonstrated an increasing inability to fund budgeted capital projects over the last three years. Required pollution control expenditures will make funding of capital projects urgent in coming years.

7. BREC has a significant amount of fixed debt and debt service obligation, associated with the current scale of BREC fixed assets and operations. The fixed cost of funding this debt service will be urgent in coming years.

8. BREC faces higher interest expenses due to rising interest rates, given its significant amount of debt and capital expenditure requirements. To the extent BREC has debt obligations with variable interest rates, or is required to seek additional funding in the capital markets, higher interest expenses will be incurred.

9. BREC faces liquidity challenges since it was not able to finance maturing Pollution Control Bonds, and was obliged to use repurposed CoBank funds as well as Transition Reserve funds to pay off the bonds. The departure of the smelters has caused BREC to have to renegotiate line of credit agreements to provide ongoing liquidity, which renegotiations are not complete. Furthermore, the CFC Amended and Restated Line of Credit contains new restrictions on access to Line of Credit funds.

Restructuring or bankruptcy by their nature addresses the excess of debt obligations over earning capacity of assets and operations. Each of these various exigencies is rooted in or made worse by an excess of BREC debt obligations over earning capacity of BREC assets and operations, and thus each of these urgent matters can be addressed or alleviated by restructuring or bankruptcy.

No other analyses, studies or other documents are necessary to rely upon for these conclusions.

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 6

Refer to the Direct Testimony of David Brevitz at page 27, lines 3-5. Please provide all analyses and documents supporting your conclusion that "BREC's request to increase rates for large industrial consumers in this case and prospective further increases to those rates is in direct conflict with BREC's efforts under the Mitigation Plan to attract new large industrial load."

a. Please explain in detail any analysis undertaken with respect to a comparison of Big Rivers' requested rates and the existing rates of potential industrial customers currently located in other areas of the country.

b. Provide any comparison of Big Rivers' large industrial rates against the large industrial rates of other utilities relied on by Mr. Brevitz. If he did not rely on any such comparison, please explain why.

RESPONSE:

a. No such analysis was undertaken since it was not necessary to do so for purposes of this question and answer in the testimony, as explained by the remainder of the response to the question in the testimony. Furthermore, the conflict between the Mitigation Plan efforts and the proposed rate increases is directly illustrated by the testimonies filed by Mr. Henry on behalf of Domtar, Mr. Cummings on behalf of Kimberly Clark, and Ms. Thomas on behalf of Aleris.

b. See response to 6(a).

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 7
Page 1 of 2

With respect to the Unwind Transaction, identify and describe all factors other than the unanticipated downturn in the wholesale market that contributed to the financial circumstances identified and described in the Direct Testimony of David Brevitz beginning at page 31, line 5 through page 32, line 19.

RESPONSE:

Objection to the form of the question. Additionally, the question seeks information and analyses the production of which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding. Additionally, to identify "all factors" as set forth in this question would be unduly burdensome, wasteful of time and resources and unlikely to lead to information relevant to this proceeding. Without waiving these objection, the OAG states as follows.

The cited testimony compares various financial line items as projected by the Financial Model in the Unwind case for 2012 and 2013 to actual financial results for 2012, and projected results for 2013 from the Financial Model in this case.

Notwithstanding the objection, there likely are various factors that could have contributed to the variances between financial results projected by the Unwind Financial Model and financial results actually achieved in 2012, and projected to be achieved in 2013. While the difference between the market prices assumed in the Unwind Financial Model versus actual market prices in years subsequent to the Unwind is a material cause of variance in financial results from projections, there are other factors that contribute to the variances, for example:

1. The Unwind Financial Model may have incorporated inaccurate inputs or assumptions. Thus the comparative base of the Unwind Financial Model may have been inaccurate to some extent. However, this is the financial information which BREC presented to the Commission to support approval of the proposed Unwind transaction.
2. Subsequent to the Unwind transaction, BREC's operations have been subject to daily decisions by BREC management. These decisions over the past three years ultimately impact the company's borrowings, investments, expenses and revenues. As explained by Mr. Ostrander, one such decision immediately upon the Unwind

transaction was to pay retention bonuses and significantly increase executive pay. Mr. Ostrander discusses these significant pay increases at pages 23-43 of his testimony.

3. BREC management also has made decisions which lead to excessive costs for outside services. Mr. Ostrander discusses these excessive costs for outside services in the context of adjusting BREC's proposed rate case expense at pages 52-68 of his testimony.

4. Subsequent to the Unwind transaction, BREC's budgeting process has suffered from inaccuracies. Mr. Ostrander provides a limited discussion of budgeting inaccuracies at page 20 of his testimony.

5. The base case Unwind Financial Model does not assume the departure of the Smelters load.

6. The Unwind Financial Model does not assume the costs of laying up Wilson Station.

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 8
Page 1 of 1

Refer to the Direct Testimony of David Brevitz at page 37, lines 10-13, where he states that "with the impending Alcan departure, the restart of the Wilson Station would obviously extend further into the future, all other things equal." Please explain the basis for this assertion, and provide all analyses and other documents upon which Mr. Brevitz relied to support this assertion.

RESPONSE:

The full statement, including the preceding sentence is: "BREC states in response to PSC Staff 2-21(c) the 'current long-term Financial Model indicates Wilson Station will restart in 2019.' However, it is crucial to recognize that this considers only the Century departure, and with the impending Alcan departure, the restart of Wilson Station would obviously extend further into the future, all other things equal." The basis for this statement is logic—it is illogical to believe that the Wilson Station would restart sooner after the Alcan load leaves the BREC system.

WITNESS RESPONSIBLE:
David Brevitz

QUESTION No. 9:
Page 1 of 1

Has the Attorney General or any of his witnesses analyzed whether the electric rates for Big Rivers' members or their retail customers after a Big Rivers bankruptcy filing would be lower than the rates Big Rivers has proposed in this proceeding? If so, please provide all such analyses and all documents arising out of, related to, or concerning those analyses.

RESPONSE:

Objection to the form of the question, and to the inference and/or apparent assumption that Big Rivers will or may file for bankruptcy. Without waiving this objection, no such analysis has been performed.

WITNESS RESPONSIBLE:
David Brevitz and Counsel

QUESTION No. 10

Is it the policy of the Attorney General of Kentucky that seeking relief from the Public Service Commission that is likely to force a utility into bankruptcy is an appropriate tactic to oppose a rate increase by that utility?

a. If so, please describe in detail the process undertaken by the Attorney General to develop this policy, including a description in detail of the communications the Attorney General had with Big Rivers, other public officials, lending institutions, financial ratings agencies, other utilities, and any other person in the course of developing this policy. Please provide a copy of all studies, analyses, and documents relied upon by the Attorney General to develop this policy.

b. If this is not the policy of the Attorney General, please explain in detail how Big Rivers could avoid bankruptcy if the Commission adopts the positions advanced by the Attorney General's witnesses in this case.

RESPONSE:

Objection. The question seeks information that is covered by the Attorney-Client Privilege. Additional objection to the form of the question.

Without waiving these objections, the Attorney General disagrees with the question's following premises: (a) that he is "seeking relief from the Public Service Commission"; (b) that the alleged "relief" which Big Rivers states the Attorney General is seeking "is likely to force a utility into bankruptcy", (c) that the Attorney General has employed a "tactic" in this case, and (d) it is the responsibility of the Attorney General to "explain in detail" to Big Rivers "how Big Rivers could avoid bankruptcy." The word "bankruptcy" appears only once in the Attorney General's testimony (Brevitz direct, p. 10), and then only in context with BREC's prior bankruptcy. As stated in his testimony, the Attorney General believes that Big Rivers' intent as stated in this case to make its ratepayers bear the entire burden of the loss of the Century smelter load and the resultant excess capacity would create rates that would be unfair, unjust and unreasonable. Big Rivers found itself in similar financial circumstances in 1987, when it attempted to make its ratepayers cover all the costs of the Wilson plant, as set forth in Case No. 9613. In that case, the Public Service Commission stated that Big Rivers' ratepayers "should not have unlimited responsibility for Big Rivers' debt. Furthermore, they should not be required to provide all of the revenues to offset shortfalls arising from insufficient off-system sales." (Case No. 9613, Order dated March 17, 1987, p. 19). The Attorney General believes that Big Rivers' creditors appropriately bear a significant share of the risk of Big Rivers' financial losses; consequently, the company should work with those creditors to obtain the financial relief it needs. It is the responsibility of Big Rivers to manage its relationships with its creditors to avoid bankruptcy.

Data Requests Relating to Testimony of Bion Ostrander

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 11
Page 1 of 3

Refer to the Direct Testimony of Bion C. Ostrander at page 7.

a. Please provide all studies upon which Mr. Ostrander relies to conclude that setting rates based upon a 1.10 MFIR is reasonable, and likely to keep Big Rivers' MFIR at or above 1.10 MFIR such that Big Rivers will remain in compliance with the requirements of its credit documents and will continue to be able to provide the certificates necessary to secure new debt under its Indenture.

b. Identify and provide all Commission decisions in which the Commission has based rates on less than a 1.24 MFIR or 1.24 TIER.

RESPONSE:

(a) Mr. Ostrander did not perform any formal studies. Mr. Ostrander's testimony (page 9, lines 18 to 21, and page 10, lines 1 to 5) states that for purposes of this case, the 1.10 MFIR and 1.24 TIER are very similar because BREC does not pay any state or federal income tax expense to include in the MFIR calculation. Mr. Ostrander's testimony (page 9, lines 1 to 4) states that the only calculation difference between the MFIR and TIER in this case is that the TIER (as required by the Smelter Contract) requires the removal of interest income on the Transition Reserve in the calculation of net margins. However, this interest income on Transition Reserve is only $105,000 (Ostrander, Exhibit BCO-2, Schedule A-1, columns C and D, line 19). The impact of using the interest income of $105,000 in the TIER calculation is not material and does not influence any outcome or decision in this case, therefore the MFIR and TIER are essentially the same for this case. In fact, Mr. Ostrander's testimony demonstrates the insignificance of the $105,000 interest income on TIER/MFIR calculations. Mr. Ostrander's Exhibit BCO-2, Schedule A-1, column C, lines 22 and 23, shows the "Unadjusted" TIER and MFIR, and the interest income of $105,000 only results in a difference of .01 (TIER of -.35 and MFIR of -.34), and column D, lines 22 and 23 shows there is no difference in the TIER and MFIR calculation, the impact of the $105,000 is lost in the rounding. Because BREC supports the 1.24 Contract TIER and OAG supports the 1.10 MFIR, there are essentially no differences between the two positions for purposes of this case, as long as BREC does not pay any significant income taxes. In fact, BREC's own data shows this will likely be the case, in two examples. First, BREC's "Comparative Income Statements, Revenue Statistics, and Sales Statistics" (Tab 55 Attachment, witness Ms. Richert, page 1 of 2) submitted with its filing shows BREC does not plan to pay any significant taxes for the foreseeable future at least through the end of 2016, as the Company has only budgeted <u>$1,000 in taxes</u> for the Base Period 2013, Forecasted Test Period August 31, 2014, Budget Year 2015, and Budget Year 2016. Second, BREC's audited financial statements for December 31, 2012, Note 6 Income Taxes, states that BREC "has not recorded any regular income tax for the years ended December 31, 2012, 2011, and 2010, as the Company has utilized federal net operating losses to offset any regular taxable income during those years." (Big Rivers' First Updated Response, dated April 19, 2013, to AG 2-39 containing a copy of Big Rivers' Independent Auditors' Report, Notes to Financial Statements, note 6, p. 19).

Mr. Ostrander's testimony (page 8, lines 13 to 15, and footnote 6) acknowledges that the Commission adopted the 1.24 "Contract TIER" in the prior BREC rate case. However, it can be reasonably concluded that the Commission adopted the 1.24 TIER because this was a contractual obligation with the Smelters. However, as Mr. Ostrander's testimony indicates (page 10, lines 9 to 20, and page 11, lines 1 to 5), this will not be a contractual obligation with the loss of the Smelters. Therefore, the highest remaining contractually obligated TIER/MFIR is now the 1.10 MFIR, so it is reasonable to adopt this MFIR for purposes of this rate case.

(b) Objection. The question seeks information and analyses which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding. BREC is just as capable of conducting this analysis by itself.

Without waiving this Objection, please see the response to Question 11a. Each rate case must be evaluated on its own merits, subject to new and different facts and conditions. There cannot be any automatic conclusion that a Commission decision to adopt an MFIR/TIER of less than 1.24 in another rate case has any merit or application to this case, especially considering the response to Question 11a. Furthermore, BREC has failed to explain in this case why it is necessary to adopt a 1.24 TIER over a 1.10 MFIR when both calculations arrive at essentially the same results as long as BREC does not pay any significant income taxes, as explained in the response to Question 11a.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 12
Page 1 of 1

Refer to the Direct Testimony of Bion C. Ostrander at page 11. Provide citations to all cases in which the Commission has applied the known and measurable standard to a fully-forecasted test period.

RESPONSE:

Objection. The question seeks information and analyses which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding. BREC is just as capable of conducting this analysis by itself.

Without waiving this Objection, the OAG has not conducted this type of analysis. Also, each rate case must be evaluated on its own merits, subject to new and different facts and conditions and Mr. Ostrander's testimony stands on its merits. Mr. Ostrander's testimony (page 12, lines 5 to 15) indicates that it appears that BREC's filing is technically compliant with Kentucky statutes regarding a forecasted period, although he identified other significant concerns with the filing. The mere fact that a Company files a fully forecasted test period does not and cannot justify any conclusion that the entire application should be accepted at face value, that all adjustments are reasonable, that no conditions have changed since the original filing, and that the filing is completely accurate. This OAG reserves all rights to contest any and all aspects of BREC's test period utilized in this proceeding.

Additionally, there cannot be any automatic conclusion that a Commission decision in a prior rate case (using a fully-forecasted test period) with different facts and conditions will be indicative of a decision in this rate case.

Furthermore, as BREC's question is worded, it appears to assume that for fully-forecasted test periods the Commission would accept adjustments that can be "unknown and unmeasurable." Such a result would be illogical and unlikely.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 13
Page 1 of 1

Refer to the Direct Testimony of Bion C. Ostrander at page 18, lines 17-25 and at page 40, line 16. Please list all data Mr. Ostrander claims Big Rivers failed to provide, and provide a citation to the record where the information was requested.

RESPONSE:

Objection. The question seeks information and analyses which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding. BREC is just as capable of conducting this analysis by itself.

Without waiving this objection, the OAG states that Mr. Ostrander's testimony stands on its own merits and addresses these matters. Mr. Ostrander discusses the payroll information that was not provided at pages 23 to 43 of his testimony, including cites to the related data requests. In addition, there may be other instances of BREC's failure to provide requested payroll information that are not specifically addressed in Mr. Ostrander's testimony.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 14

Refer to the Direct Testimony of Bion C. Ostrander at page 33, lines 1-16. Please provide all analyses and other documents relied upon by Mr. Ostrander to evaluate the anticipated impacts that the proposed "more protective covenants and controls" over BREC would have upon attraction and retention of skilled and experienced employees at Big Rivers.

RESPONSE:

Objection. The question seeks information and analyses which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding. BREC is just as capable of conducting this analysis by itself.

Without waiving this Objection, the OAG states that it has not conducted this type of analysis. Also, each rate case is evaluated on its own merits, subject to new and different facts and conditions and Mr. Ostrander's testimony stands on its merits.

It cannot be automatically concluded that a more protective loan covenant that restricts or places some controls on significant pay increases or bonuses for officers and employees would impact attraction and retention of skilled and experienced employees at BREC. BREC has lost employees without this condition being in place because of its own actions or inactions, and BREC has lost employees although it has paid significant bonuses/pay increases. Therefore, this impact would be difficult to measure as there may be very many reasons why employees or potential employees choose to apply (or not apply) for jobs with BREC or to stay employed (or not stay employed) with BREC.

BREC's ability or inability to attract and retain skilled and experienced employees could be affected or influenced by multiple factors, including protective covenants, and multiple actions and/or inactions BREC has taken or not taken, as well as the company's current financial instability. One potential impediment to the ability to attract and retain employees could be a perception that current management is not operating the Company prudently or properly given its current financial difficulties.

QUESTION No. 14

Additionally, certain reasonable internal controls that are implemented could help attract or retain employees because they could make the company more financially viable and stable for the long-term and promote long-term employment and benefits down the road.

Finally, BREC has not shown that its "retention program" (which paid amounts to employees to remain with BREC) was successful and produced the expected outcomes, and in fact BREC did not even provide the amount of payments to these employees that would allow OAG to conduct this type of analysis. Therefore, even if an analysis could be conducted as BREC raises in this question, it is not clear if BREC would provide the necessary information for OAG to conduct such an analysis.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 15
Page 1 of 1

Refer to the Direct Testimony of Bion C. Ostrander at page 53, line 13. Please list the supporting information Mr. Ostrander claims was requested but not provided, and provide a citation to the record where the information was requested.

RESPONSE:

Objection. The question seeks information and analyses which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding. BREC is just as capable of conducting this analysis by itself.

Without waiving this objection, the OAG states that Mr. Ostrander's testimony stands on its own merits and addresses these matters. Mr. Ostrander discusses the rate case expense information that was not provided at pages 52 to 67 of his testimony, including cites to the related data requests and other supporting information. In addition, there may be other instances of BREC's failure to provide requested rate case expense information that are not specifically addressed in Mr. Ostrander's testimony.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 16

Refer to the Direct Testimony of Bion C. Ostrander at page 54, lines 22-24. Please provide a citation to record for referenced invoice.

RESPONSE:

Please see Mr. Ostrander's testimony at page 59, lines 8 to 15, with related cites, and also page 65, lines 8 to 15, with related cites.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 17
Page 1 of 1

Refer to the Direct Testimony of Bion C. Ostrander at page 54, lines 26-27. Identify all legal invoices Mr. Ostrander believes exist but have not been provided by Big Rivers.

RESPONSE:

Objection. The question seeks information and analyses which would be unduly burdensome, time consuming, and seeks data which is in BREC's exclusive control.

Without waiving this objection, the OAG states that it is not possible for Mr. Ostrander to identify the population of invoices that exist but have not been provided. Only BREC or the party invoicing these costs would have access to that internal information. Mr. Ostrander can only review invoices that are submitted, not invoices that are not submitted.

WITNESS RESPONSIBLE:
Bion Ostrander

QUESTION No. 18

Refer to the Direct Testimony of Bion C. Ostrander at page 54, lines 34-37. Identify all contracts and engagement letters Mr. Ostrander believes should have been provided but were not provided by Big Rivers.

RESPONSE:

Objection to the form of the question. Without waiving this objection, the OAG states as follows. This particular cite to Mr. Ostrander's testimony only refers to contracts or engagement letters with outside attorneys, so the response will be limited to that issue. Mr. Ostrander is not asserting that contracts and engagement letters exist with outside attorneys, but were not provided - - as this question may infer.

Mr. Ostrander's point is that it would have been reasonable for BREC to have contracts or engagement letters with outside attorneys, especially to help document and support the amount of significant "projected" outside legal costs included as rate case expenses in this case. Based on the company's responses to data requests, it appears that the only data that exists in support of these significant outside legal costs is BREC's projected/estimated amounts, without any specific supporting documentation from the outside attorneys.

Also, a contract or engagement letter from outside attorneys would help: (a) set forth the specific and different responsibilities and rate-case related issues to be addressed for each of the four different outside attorneys; (b) address any concerns regarding overlap of responsibilities and duplicative billings for rate case versus non-rate case related costs; (c) clarify and explain the types of services/issues that they are treating as being related to the rate case versus not being related to the rate case; (d) explain the duration of time for providing services; (e) identify acceptable or proposed billing rates; and (f) to establish some level of internal controls for which types of costs are to be treated as rate case costs and which type of costs are not to be treated as rate case costs.

It is generally considered to be most beneficial, efficient, legally sound, a good internal control method, and overall proper business practice to have formal contracts/engagement letters in place, especially for any type of outside services that will be provided over a long-term period and/or for significant costs. A formal contract/engagement letter can help avoid disputes or even possible costly litigation regarding "interpretation" of the length/term of services to be provided, the costs for services to be provided, the conditions and specific types of services to be provided, and other related matters. Generally, more documentation rather than less documentation, is always a safe and reasonable business practice regarding significant services with an outside entity or vendor.

The failure to have a contract/engagement letter in place can invite and even promote unproductive and excessive charges by a vendor/outside entity, because without any constraints or controls in place the outside entity has no upper bounds or limitations on their billed charges. Most importantly, the Company has no guiding document for which to objectively evaluate whether the billings/services that are being submitted are reasonable or compliant. Thus, the Company may just pass-through and rubber stamp all billings from an outside entity with no formally documented reason or contract in place to contest any billings/services.

WITNESS RESPONSIBLE:
Counsel

QUESTION No. 19
Page 1 of 1

Identify each outside professional, including legal counsel and consultants, the Attorney General has retained related to this case. Please produce a copy of the engagement letter or other document(s) describing the scope, terms, and fees applicable your engagement of any outside professionals, including all legal counsel and consultants, related to this case.

RESPONSE:

Objection. The question calls for information and materials subject to the Attorney-Client and/or Work Product Privileges. Without waiving these objections, the Attorney General states that he has consulted with the following: Mr. David Brevitz, Mr. Bion Ostrander, and Mr. Larry Holloway.

WITNESS RESPONSIBLE:
Counsel

QUESTION No. 20
Page 1 of 1

Provide all costs related to this case incurred to date for each outside professional identified in the Attorney General's response to the previous Item of these requests, and provide an estimate of the total costs related to this case that you will incur for each such outside professional.

RESPONSE:

Objection. The question calls for information and materials subject to the Attorney-Client and/or Work Product Privileges.

WITNESS RESPONSIBLE:
Counsel

QUESTION No. 21
Page 1 of 1

Please provide a copy of all documents showing communications between the Attorney General (or his agents, employees, or witnesses) and any representative of another intervenor regarding, arising out of, or related to this case.

RESPONSE:

Objection. The question calls for information and materials subject to the Attorney-Client and/or Work Product Privileges, and/or which are unnecessarily duplicative, and/or which are exempt under KRS 61.878.

WITNESS RESPONSIBLE:
Counsel

QUESTION No. 22
Page 1 of 1

Please provide a copy of all documents showing communications between the Attorney General (or his agents, employees, or witnesses) and any person not a party to this case regarding, arising out of, or related to this case.

RESPONSE:

Objection. The question calls for information and materials subject to the Attorney-Client and/or Work Product Privileges, and/or under KRS 61.878. Additionally, the question seeks information the production of which would be unduly burdensome, time consuming, and unlikely to lead to information relevant to this proceeding.