

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION REGARDING TRANSFER OF CONTROL OF TRANSMISSION LINE EASEMENTS)	CASE NO.
)	2012-00487
)	
)	

ORDER

On November 8, 2012, Big Rivers Electric Corporation ("Big Rivers"), filed an application seeking a finding that Commission approval is not required for Big Rivers to transfer control of certain transmission line easements to Southern Indiana Gas & Electric Co. d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren") because the book value of the assets involved is zero (less than the \$1,000,000 threshold of KRS 278.218(1)). In the alternative, Big Rivers requested that the Commission grant its approval of the proposed transfer of control in accordance with KRS 278.218, which provides that "[t]he commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest."

BACKGROUND

Vectren is an Indiana corporation and a public utility providing electric service in Indiana, but is not a regulated utility in Kentucky, and is not subject to the jurisdiction of the Commission. Vectren designed and constructed a 345 kV transmission line which runs from Duke's Gibson Station in Gibson County, Indiana, to Vectren's Brown Power Plant in Posey County, Indiana, and then to Big Rivers' Reid EHV Station in Webster County, Kentucky, spanning a total of about 70 miles. Hereafter the 345 kV line and

sections thereof are referred to in this Order as the “Line,” “Line Phase 1,” or “Line Phase 2,” as appropriate.

The Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) approved the Line as a baseline regional reliability project through Midwest ISO’s Transmission Expansion Plan (“MTEP”) regional planning process.¹

On May 24, 2010, Big Rivers and Vectren entered into a Memorandum of Understanding (“MOU”) in which the parties agreed to collaborate in the construction of approximately 15 miles of the Line that would run from Vectren’s Brown Power Plant in Posey County, Indiana to Big Rivers’ Reid EHV Substation in Webster County, Kentucky (“Line Phase 2”).²

Vectren, as a utility not regulated by the Commission, was required to obtain a construction certificate issued by the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”) before beginning construction of a new, non-regulated transmission line in Kentucky. On July 15, 2010, Vectron filed an application with the Siting Board seeking a certificate to construct an approximately 15-mile 345 kV non-regulated transmission line in Henderson County and Webster County, Kentucky.³ On December 21, 2010, the Siting Board approved Vectren’s application.⁴

¹ Memorandum of Understanding Between Big Rivers Electric Corporation and Southern Indiana Gas & Electric Co. d/b/a Vectren Energy Delivery of Indiana at 1 (May 24, 2010).

² Application at 1-2.

³ *Application of Southern Indiana Gas & Electric Co. d/b/a Vectren Energy Delivery of Indiana, Inc. for a Certificate to Construct an Electric Transmission Line from Its A.B. Brown Plant to the Big Rivers Reid EHV Station*, Siting Board Case No. 2010-00223 (filed Jul. 15, 2010).

⁴ *Id.* at 21-22 (Dec. 21, 2010).

Pursuant to the MOU,⁵ Vectren agreed to design, construct, and own transmission line easements for that portion of the project that was in Indiana. Vectren also agreed to provide Big Rivers with design and modeling information for the portion of the project that is located in Kentucky. Big Rivers agreed to provide project facilitation for the Kentucky portion, including right-of-way acquisition, using its power of condemnation, if necessary. Big Rivers also agreed to grant Vectren the right to construct, operate, and maintain the transmission line on the Reid Station property and on the other transmission line easements acquired by Big Rivers for the project. All related costs were to be paid by Vectren with no reimbursement from Big Rivers.

Big Rivers secured 19 easements through direct negotiations with landowners. Seven of these easements were acquired without the necessity of filing condemnation proceedings.⁶ Condemnation proceedings were instituted on 12 easements; the cases were subsequently settled and the easements acquired.⁷ Big Rivers also acquired one temporary easement for purposes of construction without the necessity of instituting condemnation proceedings. A third-party vendor secured 18 easements in favor of Big Rivers. In total, Big Rivers secured 37 permanent easements for the transmission line and one temporary easement for purposes of construction.⁸ With two exceptions, these

⁵ Application at Exhibit 1.

⁶ Big Rivers' Response to Commission Staff's Initial Request for Information, Item 1.

⁷ *Id.*, Item 3.

⁸ *Id.*, Item 1.

were all of the easements required for the Kentucky portion of Line Phase 2.⁹

According to Big Rivers, the landowners who sold the easements were informed that although the easements were being secured in Big Rivers name, the easements were for Vectren, that Vectren would build the transmission line using the easements, and that Vectren would obtain other rights to the easements from Big Rivers.¹⁰ Also according to Big Rivers, the easements were obtained in its name rather than Vectren's name "because of the obligation of Big Rivers under the MOU to acquire all necessary easements for the Kentucky portion of Line Phase 2."¹¹

ISSUE

At issue is whether Big Rivers must obtain Commission approval under KRS 278.218 to transfer to Vectren, ownership of or control, or the right to control, the transmission line easements it obtained and owns pursuant to the MOU. Big Rivers asserts that the proposed transaction does not require Commission approval. If Commission approval is required, however, Big Rivers claims that the transfer of these transmission line easements from Big Rivers to Vectren is for a proper purpose, is consistent with the public interest, and should therefore be allowed.

APPLICABLE LAW

Under prescribed circumstances, a utility is required to obtain Commission approval prior to a change in ownership or control of assets owned by the utility. KRS

⁹ *Id.*, Item 2. Of these two easements, one was acquired in the name of Vectren from West Kentucky Regional Industrial Development Authority, Inc. The second easement relates to property purchased by Vectren in fee simple. Big Rivers will acquire an easement from Vectren for this second property. With both of these easements, Big Rivers proposes to assign to Vectren the rights necessary for Vectren to construct, operate, and maintain the electric transmission line Vectren has constructed on both of the properties.

¹⁰ Big Rivers Response to Commission Staff's Initial Request for Information, Item 4.

¹¹ *Id.*, Item 2.

278.218 states as follows:

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence; or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

(2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

The first question that must be addressed is whether the 37 permanent easements and the one temporary easement that Big Rivers acquired for purposes of construction of the transmission line have an original book value of one million dollars (\$1,000,000) or more. Big Rivers states that the MOU between Vectren and itself provides that Big Rivers would acquire and own, at no cost to itself, the easements associated with the Kentucky portion of Line Phase 2 of Vectren's 345 kV transmission line. Big Rivers claims to have no investment in the easements, which it owns, even though Vectren paid over \$2,500,000 to the landowners for the easements.¹²

The accounting policies and procedures established by 7 CFR Part 1767, *Accounting Requirements for RUS Electric Borrowers*, and reprinted in RUS Bulletin 1767B-1 (the "*RUS Bulletin*"), *Uniform System of Accounts*, set forth guidance on accounting for electric plant. Section 1767.16(b)(4) of the *RUS Bulletin* states the following regarding the cost of plant constructed by a cash contribution.

¹² Application at 5.

The electric plant accounts shall not include the cost or other value of electric plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of electric plant shall be credited to accounts charged with the cost of such construction. Plant constructed from contributions of cash or its equivalent shall be shown as a reduction to gross plant constructed when assembling cost data in work orders for posting to plant ledgers of accounts. The accumulated gross costs of plant accumulated in the work order shall be recorded as a debit in the plant ledger of accounts along with the related amount of contributions concurrently be recorded as a credit.

One interpretation of the above provision is that there should have been a \$2.5 million debit in Big Rivers' plant ledger of accounts, with \$2.5 million recorded as a credit. While the net of the two entries is zero, the books should reflect both a debit and a credit. If the original book value was \$2.5 million, with an offsetting contribution of \$2.5 million, this original book value of \$2.5 million would trigger the required approval by the Commission under KRS 278.218.

It is Big Rivers' position, however, that since Vectren contributed the funding for the easements directly, the expenditures for the easements must be recorded in Vectren's electric plant accounts as a cost of its 345 kV transmission line. Big Rivers states that it will document in its property records that it owns the easements associated with the Vectren 345 kV transmission line and it will record the easements at zero value.¹³

Big Rivers' position is based on the fact that Vectren contributed 100 percent of the funding for the acquisition of the easements;¹⁴ Big Rivers did not provide the initial funding for the easements and none of the funds for the easements flowed through Big

¹³ *Id.* at 6.

¹⁴ *Id.*

Rivers' books;¹⁵ most of the easements were acquired on behalf of Big Rivers through the services of a third-party vendor, which issued drafts drawn against a Vectren account;¹⁶ and easements acquired by Big Rivers in connection with eminent domain proceedings were also paid for with checks drawn on Vectren.¹⁷

Although an argument could be made that under Section 1767.16(b)(4) of the *RUS Bulletin*, Commission approval is required prior to the requested transfer of the transmission line easements to Vectren, the specifics of Big Rivers' acquisition and ownership of these easements refutes that argument. Big Rivers has acknowledged that the easements were acquired in its name, or were transferred to it by Vectren, but maintains that it has had no financial obligation or involvement in securing the easements. It is because of this lack of financial contribution in the acquisition of these easements that Big Rivers asserts it does not need the Commission's approval to transfer them to Vectren. Big Rivers claims that because KRS 278.218 only applies if the assets to be transferred by a utility have an original book value of one million dollars (\$1,000,000) or more, and because Big Rivers has recorded the original book value of the easements at zero, Commission approval is not required for it to transfer the easements to Vectren.

Based on a review of Big Rivers' application and the provisions of KRS 278.218, the Commission finds that because the original book value of the assets to be transferred by Big Rivers to Vectren was recorded at zero and did not have an original

¹⁵ *Id.*

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6.

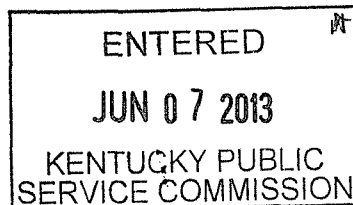
book value of one million dollars (\$1,000,000) or more, Big Rivers needs no approval from the Commission to transfer those assets to Vectren.

IT IS THEREFORE ORDERED that:

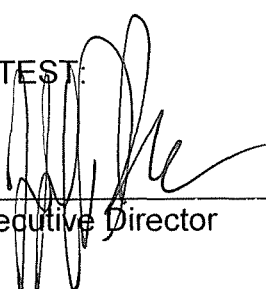
1. Big Rivers' application seeking a finding that Commission approval is not required for Big Rivers to transfer control of certain transmission line easements to Vectren is granted.

2. Big Rivers is authorized to transfer control of certain transmission line easements without further approval from the Commission under KRS 278.218.

By the Commission



ATTEST:



Executive Director

Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727