COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS	)))	Case No. 2012-00119

ORDER

On March 28, 2012, Big Rivers Electric Corporation ("Big Rivers") filed an application seeking Commission authority to issue the following new evidences of indebtedness: (1) a secured term loan with CoBank, ABC ("CoBank") in an amount of $235 million;[1] (2) a secured term loan with National Rural Utilities Cooperative Finance Corporation ("CFC") in an amount of $302 million;[2] (3) an equity loan with CFC in an amount of $43,155,800;[3] and (4) an unsecured revolving credit facility with CoBank in the amount of $50 million to replace the 2009 CoBank facility.[4] Big Rivers intends to use the proceeds of these debt instruments to refinance a significant portion of an existing 5.75 percent Rural Utilities Service ("RUS") 2009 Promissory Note Series A ("RUS Note"), for capital expenditures in the ordinary course of business, to purchase

[1] Application at page 3.

[2] *Id.* at page 4.

[3] *Id.*at pages 4-5.

[4] *Id.*at page 4.

Capital Term Certificates from CFC, and to replenish the Transition Reserve investment account, which currently resides as a prepayment on the existing RUS Note.[5]

Big Rivers is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. Big Rivers owns electric generation and transmission facilities and purchases, transmits, and sells electricity at wholesale, and is a utility subject to the Commission's jurisdiction under KRS Chapter 278. Big Rivers exists for the principal purpose of providing the wholesale electricity requirements of its three member distribution cooperatives, Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation. Big Rivers is owned by its three member cooperatives, which provide retail electric service to approximately 112,500 consumer-members located in 22 Western Kentucky counties: Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Union and Webster.

PROCEDURAL HISTORY

Big Rivers filed its Application on March 28, 2012. By Order dated April 4, 2012, a procedural schedule was established which included two rounds of discovery on the Application. On April 12, 2012, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed its petition to intervene on behalf of Alcan Primary Products Corporation; Century Aluminum of Kentucky, General Partnership; Domtar Paper Co., LLC; Kimberly Clark Corporation; and Aleris International, Inc., all of whom purchase electricity from Big Rivers through Kenergy Corp. KIUC was granted intervention on April 18, 2012. The

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[5] *Id.* at pages 4-5.

procedural schedule was modified on May 17, 2012 to allow for comments from KIUC and reply comments from Big Rivers. KIUC filed comments on May 18, 2012 and Big Rivers filed reply comments on May 23, 2012.

BACKGROUND

Big Rivers seeks authorization to: (1) borrow $235 million from CoBank in the form of a secured term loan; (2) borrow $302 million from CFC in the form of a secured term loan; (3) borrow $43,155,800 from CFC in the form of a CFC Equity Note to purchase Capital Term Certificates ("CTCs"); and (4) enter into an unsecured revolving credit facility with CoBank in the amount of $50 million ("CoBank Revolver") to replace the existing 2009 CoBank Facility in the same amount, which expires by its own terms on July 16, 2012. The CoBank secured term loan, CFC secured loan, and the CFC Equity Note will have loan terms of 20 years.

Big Rivers plans to use the combined $537 million loan amount from the CoBank secured term loan and the CFC secured loan as follows: (1) $442 million will be prepaid on the RUS Note; (2) $60 million will be for capital expenditures used in the ordinary course of business; and (3) $35 million will be used to replenish the Transition Reserve that was depleted when a prepayment was made on the RUS Note on April 1, 2011.

In connection with the CFC secured loan, Big Rivers is required to purchase interest-bearing CTCs in the amount of $43,155,800 from CFC, which represents 14.29 percent of the amount of the CFC secured loan. Big Rivers proposes to finance the purchase of the CTCs with a note issued to CFC.

Lastly, Big Rivers requests authorization to execute the CoBank revolving credit facility ("CoBank Revolver") of $50 million to replace the 2009 CoBank Facility. Big

Rivers will use the CoBank Revolver for the same purposes as its 2009 CoBank Facility, i.e., for working capital and general corporate purposes, including but not limited to capital expenditures.

BIG RIVERS' PROPOSED FINANCING

The RUS Note's outstanding balance is currently $526,603,000. Big Rivers' proposed financing would reduce this current balance to $84,603,000, or by $442 million from its current level. Based on the lower interest rates offered by CoBank and CFC,[5] Big Rivers' cash flow analysis indicates the present value benefit resulting from the portion of the borrowing related to the $442 million prepayment on the RUS Note, discounted at 5.75 percent, is estimated to be $28,559,298 over the life of the loans.

Absent the proposed financing, Big Rivers is obligated to make principal payments on the RUS Note of $60 million by October 1, 2012 and $200 million by January 1, 2016. The proposed financing will satisfy these requirements. The financings are expected to be at an all-in interest rate that is below the rate of the existing RUS Note, and will also extend the final maturity of the associated debt.

Big Rivers is currently working with RUS to amend the Maximum Debt Balance Schedule of the RUS Note to reflect that no additional principal payments are due until October 1, 2019. This will have the legal effect of permanently reducing the Maximum Debt Balance on the RUS Note to $84,603,000. This permanent reduction is a requirement of both CoBank and CFC.

The commitments from CoBank and CFC for the proposed financing transactions described in this Application expire on June 29, 2012, which is the proposed closing

[5] CoBank's estimated all-in interest rate is 4.24 percent and CFC's estimated all-in interest rate is 4.76 percent

date. As such, Big Rivers requests that the Commission issue an order approving the proposed financing no later than May 25, 2012.[6]

The transactions described herein would increase Big Rivers' liabilities by $139,381,389[7] while, at the same time, would reduce Big Rivers' annual interest expense by $1,421,349[8] for nine years and extend the length of its financings by 11 years.

KIUC'S COMMENTS

In its May 18, 2012 filing, KIUC stated that it did not take a position on whether the proposed financing should be approved but that it wished to provide comments to aid the Commission in its review of this matter. KIUC stated that the interest savings associated with the proposed financing will not result in a material reduction in expenses and that re-establishment of the $35 million Transition Reserve fund using loan funds will increase Big Rivers' revenue requirement by $2.5 million per year. However, KIUC acknowledged that re-establishment of the Transition Reserve is within Big Rivers' management prerogative.

KIUC also stated that Big Rivers did not address how the proposed 20-year term loans will affect its ability to finance capital expenditures to be made in the near future for environmental compliance. KIUC further stated that the interest rates provided in the Application are "indicative only" and that Big Rivers did not make clear that it would

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[6] The May 25, 2012 requested date for an order approving the application allows for 33 days for expiration of the period for an appeal of the Commission's order prior to the closing date.

[7] Big Rivers' Response to Commission Staff's First Information Request, Item 4.

[8] Big Rivers' Response to Commission Staff's First Information Request, Item 6e.

decline to proceed with the financing transactions if the interest rates are higher than expected.

Lastly, KIUC asserted that, in the "Event of Default," under Section 2.08(b) of the CoBank Secured Credit Agreement, the interest rate would increase by 2 percent. KIUC points out that "[u]nder Section 9.06, an Event of Default would occur if a Material Direct Serve Contract representing over 20% of Big Rivers prior year revenues (this would include a Smelter contract) is terminated" and that such an event would result in a $5.8 million increase in Big Rivers' revenue requirements

BIG RIVERS' REPLY COMMENTS

In its May 23, 2012 filing, Big Rivers stated that it has been in discussions with CoBank since May 8, 2012 regarding the language in Section 9.06 of the CoBank Secured Credit Agreement and that a revision to that section has been finalized. The revised Section 9.06, which will be included in the executed version of the CoBank Secured Credit Agreement, clarifies that it is not an Event of Default if a Smelter contract expires by its own terms or is terminated pursuant to a notice of Smelter plant closure.

Big Rivers reiterated its plans to re-establish the $35 million Transition Reserve with CoBank loan funds. Big Rivers states that the Transition Reserve is to provide a source of cash in the event of a Smelter closure and that, "[s]ince April 1, 2011, those funds have essentially been 'invested' at 5.75% because Big Rivers prepaid the funds on the RUS Series A Note."

In response to KIUC regarding the effect of the proposed financing on further borrowing, Big Rivers states that "it currently has multiple options at reasonable rates for its anticipated near-term borrowing requirements" but notes that a Smelter closure could affect the availability and cost of the borrowings as well as the need for the borrowings.

Big Rivers addresses KIUC's comments regarding the interest rates being "indicative only" by stating that it is common for utilities in Kentucky to seek approval for debt where the interest rate is indicative until closing and that "KIUC's concern that Big Rivers may act contrary to its financial best interests when the time comes for Big Rivers to accept or reject final rates for the new debt is unexplained and unfounded." Big Rivers goes on to state that it is anxious to close the transactions by the scheduled June 29, 2012 date because Treasury rates, upon which the final CoBank and CFC rates will be based, are currently at historic lows.

Lastly, Big Rivers states that the proposed financing transactions immediately improve its financial condition by lowering the cost of a substantial portion of its long-term debt, replacing its $50 million revolving credit facility, providing for scheduled $60 million (by October 1, 2012) and $200 million (by January 1, 2016) principal payments on the RUS Note, and providing $60 million for capital expenditures.

FINDINGS AND ORDERS

The Commission having considered the evidence of the record and being otherwise sufficiently advised, finds that Big Rivers' proposed financings are for lawful objects within the corporate purposes of Big Rivers' utility operations, are necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair its ability to perform that service, are reasonable, necessary and appropriate for such purposes and should be approved.

Contrary to the position of KIUC, the replenishment of the $35 million Transition Reserve is not within Big Rivers' prerogative. The Transition Reserve was established in Case No. 2007-00455[9] to be used by Big Rivers as an emergency fund to offset the loss of revenue should one or both Smelters close, until alternative buyers are found for the power.[10] Big Rivers' decision to use the Transition Reserve fund in April 2011 to prepay its RUS Series A Note was essentially, as Big Rivers' characterizes it, an investment of the Transition Reserve fund at 5.75 percent with the ability to claw back that amount in less than a year upon receipt of a Smelter closure notice. The proposed financing does not include the ability for Big Rivers to prepay debt and then claw back the prepayment at a later date. Due to the importance for Big Rivers to maintain the full $335 milliion in the Transition Reserve, those funds should be deposited into an interest bearing account and used only for the expressed purpose for which the reserve was established, unless Big Rivers receives prior Commission approval to use the funds for another purpose.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to borrow from CoBank and CFC the amounts identified in the Application, but only under such terms and conditions as will produce net present value savings and only after revising Section 9.06 of the CoBank Secured

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[9] Case No. 2007-00455, The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions (Ky. PSC, March 6, 2009).

[10] Case No. 2007-00455, Big Rivers, Order dated March 26, 2009, pp. 11-12.

Credit Agreement to clarify that it is not an Event of Default if a Smelter contract expires by its own terms or is terminated pursuant to a notice of Smelter plant closure.

2. The loan maturity dates and interest rates shall be in accordance with the financing proposal as described in Big Rivers' Application and reply comments.

3. If the actual terms and conditions of the CoBank secured loan and CFC secured loan differ from those set forth in the Application, Big Rivers shall, within 30 days of executing the loan documents, file with the Commission amortization schedules and work papers showing the net present value savings that will result from the financing.

4. Big Rivers shall execute the loan documents as described in its Application, its reply comments, and as authorized herein.

5. Within 10 days of finalizing the financing transactions, Big Rivers shall notify the Commission in writing of the actual all-in effective interest rate of the new CoBank secured loan and the CFC secured loan, along with the CFC Equity Note's interest and yield rates. Big Rivers shall include with the notice an updated version of Witness Hite's Direct Exhibit E, reflecting the savings based on the actual all-in interest rates of the new CoBank secured loan and the CFC secured loan. Within 10 days of the execution of the new CoBank secured loan, CoBank Revolver, the CFC secured loan, and CFC Equity Note loan documents, Big Rivers shall file with the Commission three copies of the loan documents for each loan.

6. The proceeds for the proposed loans shall be used only for the lawful purposes set out in Big Rivers' Application.

7. The terms and conditions of the new CoBank secured loan, CoBank Revolver, CFC secured loan and CFC Equity Note shall be consistent with the financing proposal as described in Big Rivers' Application.

8. Upon closing the financing transactions approved herein, Big Rivers shall deposit $35 million of the proceeds into the Transition Reserve fund and shall invest those funds in an interest-bearing account to be used exclusively as an emergency fund to offset the loss of revenue should one or both Smelters close, unless authorized by the Commission to use the funds for another purpose.

9. Within 10 days of finalizing the financing transaction, Big Rivers shall file with the Commission a copy of the new RUS Maximum Debt Balance Schedule and a new RUS Debt Amortization Schedule.

10. Any documents filed in the future pursuant to ordering paragraphs 3, 5 and 9 shall reference this case number and shall be retained in the utility's general correspondence file.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission

ENTERED

MAY 25 2012

KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

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