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June 15, 2010

Hon. James M. Miller
Sullivan, Mountjoy, Stainback & Miller PSC
100 St. Ann Building
P.O. Box 727
Owensboro, Kentucky 42302-0727

Dear Mr. Miller:

PSC STAFF OPINION NO. 2010-009

Commission Staff is in receipt of your letter dated May 26, 2010, requesting an opinion as to whether Big Rivers Electric Corporation ("Big Rivers") is required to apply for a certificate of public convenience and necessity ("CPCN") from the Commission prior to constructing improvements to one of its substations and acquiring and holding easements in Kentucky to be used by Vectren Energy Delivery of Indiana, Inc. ("Vectren") to construct a transmission line that will be subject to the issuance of a construction certificate by the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board").

In your letter, you present the following facts: Vectren is currently designing and constructing a 70-mile 345 kV transmission line in two phases. Phase 1 involves constructing a portion of the line in Indiana. The majority of the line will be sited in Indiana. Phase 2 of the project will involve extending the 345 kV transmission line from Vectren's Brown Power Plant in Indiana, across the Ohio River, through Henderson County, Kentucky, and tying into Big Rivers' Reid high-voltage substation in Webster County, Kentucky ("Reid Substation").

Vectren is a regulated utility in Indiana, but it is not a regulated utility in Kentucky and is not subject to the jurisdiction of the Kentucky Public Service Commission. As a utility not regulated by the Commission, Vectren understands that, under KRS 278.714, it must obtain a construction certificate issued by the Siting Board before beginning construction of any new, non-regulated transmission line in Kentucky.¹

¹ On June 3, 2010, Vectren filed notice with the Siting Board of its intent to file an application for a non-regulated electric transmission line construction certificate.

Pursuant to a memorandum of agreement ("MOU") signed by Big Rivers and Vectren on May 24, 2010, a copy of which was enclosed with your letter, Big Rivers will acquire the necessary right-of-way easements for the Kentucky portion of the transmission line and will design and construct the terminal at the Reid Substation where the Vectren transmission line will connect with the Big Rivers transmission system. All Big Rivers' costs incurred in connection with the Phase 2 project will be paid by Vectren. However, Big Rivers will own the terminal facilities and will hold title to the property easements.

According to Section II of the MOU, "Big Rivers will grant Vectren *rights* under the Line Phase 2 transmission line easements, as required, for construction, operation and maintenance of the Line Phase 2 on Big Rivers' Reid Station property and on the transmission line easements acquired by Big Rivers for the Phase 2 project." (Emphasis added.) The term "rights" is not specifically defined in your letter or by the language of the MOU.

In your letter, you list a number of benefits which Big Rivers believes will accrue to it as a result of the construction of the Vectren transmission line. These benefits include:

- Improving Big Rivers' export and import capabilities;
- Reducing congestion in the southern Indiana/western Kentucky region;
- Reducing Midwest ISO congestion costs and transaction curtailments;
- Improving reliability by providing an additional transmission path into the Reid Station area;
- Improving area voltages and reducing existing lower-voltage line loadings during multiple generator or transmission outages; and
- Lessening the likelihood that Big Rivers would have to drop load in the Reid area or that Century Aluminum or Rio Tinto Alcan (the two largest industrial customers on Big Rivers' system) would have to rotate their aluminum smelter potlines during multiple outage events.

You note that Big Rivers will enjoy these benefits without having to expend any of its own funds on this project.

Your letter states that there is no language in KRS Chapter 278 that requires Big Rivers to obtain a CPCN prior to undertaking the tasks it has assumed under the May 24, 2010 MOU. You also state that KRS 278.020(1) "expressly embraces the concept that 'construction' is the activity for which a CPCN is required," but that the only construction to be performed by Big Rivers associated with the Vectren project is the "discreet modification" of its Reid Substation described above. Such minor

modifications, you note, have "always been treated as an 'ordinary extension in the usual course of business' by the Commission which do not require a CPCN prior to their undertaking."

Based upon the facts you presented, Commission Staff is of the opinion that Big Rivers is not required to obtain a CPCN prior to undertaking the activities described in the May 24, 2010 MOU regarding Vectren's construction of a 345 kV transmission line in Kentucky. Big Rivers' only construction activities will be minor modifications to its existing Reid substation, and all costs of those construction activities are to be borne by Vectren. Commission Staff agrees with Big Rivers' assertion that such construction activities are normally considered to be ordinary extensions in the course of business, which are specifically exempt from the requirement to obtain a CPCN pursuant to KRS 278.020(1).

With regard to the future transfer to Vectren of rights in the Kentucky property easements acquired by Big Rivers, the information presented in your letter does not clearly state the basis for Big Rivers to record the value of the property easements at zero (\$0) upon initially acquiring them from the property owners. It would appear that proper accounting methods would require Big Rivers to record the easements at their actual value at the time that they are acquired. The fact that Vectren will reimburse Big Rivers for the value of the easements does not mean they can be initially assigned a zero value, which would undermine the intent of KRS 278.218.

KRS 278.218(1) provides that:

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.

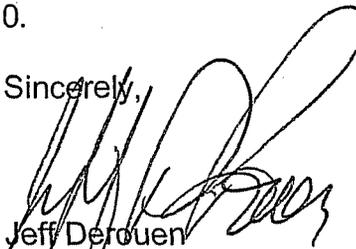
If Big Rivers' granting of rights in the easements to Vectren constitutes the transfer of "control" of the easements, and if the total value of the property easements transferred by Big Rivers exceeds the one million dollar (\$1,000,000) threshold established under KRS 278.218(1), then it may be necessary for Big Rivers to seek Commission approval prior to transferring any rights in the easements to Vectren.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the

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Commission should the issues herein be formally presented for resolution by the Commission. Questions concerning this opinion should be directed to Rick Bertelson, Staff Attorney, at (502) 564-3940, Extension 260.

Sincerely,



Jeff Derouen
Executive Director

RB:ew