

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)
APPLICATION FOR APPROVAL OF A LEVERAGED) CASE NO. 99-450
LEASE OF THREE GENERATING UNITS)

O R D E R

On November 24, 1999, the Commission authorized Big Rivers Electric Corporation ("Big Rivers") to execute a lease of its D. B. Wilson Unit No. 1 ("Wilson Unit") and its Robert D. Green Units No. 1 and 2 ("Green Units"), along with the associated common facilities at the Green Units' site, pursuant to a sale and leaseback transaction ("lease transaction") as described in Big Rivers' November 8, 1999 application. As the final terms and conditions of the lease transaction had not been finalized, Big Rivers was authorized to agree only to such terms, conditions, and prices that were consistent with the parameters set out in its application. In addition, Big Rivers was advised that the Commission's approval of the lease transaction was predicated upon the inclusion of both an interest rate reduction and a debt service schedule reduction from the Rural Utilities Service ("RUS").¹

On January 24, 2000, Big Rivers filed a motion to reopen this docket for the purpose of reauthorizing the proposed lease transaction, due to the fact that certain assumptions and representations have changed since the Commission's November 24, 1999 Order. Big Rivers also requested that the Commission find that no further

¹ November 24, 1999 Order at 13.

approvals are required for the equity participants or the owner trust to participate in the lease transaction, provided that this finding did not constitute any approval under KRS Chapter 278 that may be required if either group assumed responsibility for the operation of one or more of the generating units. Finally, Big Rivers requested expedited consideration of the motion, noting that the optimum date for it to close the lease transaction was March 1, 2000, which would require Commission approval by January 28, 2000.

Exhibit A to Big Rivers' January 24, 2000 motion includes a description of the specific changes in the term sheet for the lease transaction. The most significant change is related to the reduction of Big Rivers' debt service obligations to the RUS. In its original application, Big Rivers stated that the RUS had agreed to reduce the interest rate on Big Rivers' debt and restructure the debt service in recognition of the total net cash benefit being paid to RUS and applied to the New RUS Note. However, the RUS has informed Big Rivers that because of changes in its debt due to the bankruptcy restructuring, the benefit of an interest rate reduction is not available.² In addition, RUS is requiring as a precondition to its approval of the lease transaction that it be paid at least \$70 million at the closing of the lease transaction, which will be reflected as a permanent reduction in like amount in the principal of the New RUS Note.

Because of the changes in the lease transaction terms, applicable interest rates, and the passage of time, Big Rivers currently estimates that the net cash benefit is

² "Because there is no longer a connection between BREC's direct obligations to RUS and RUS's guarantee of BREC's pre-bankruptcy obligations to FFB, there is no additional benefit to pass on to BREC in the form of an interest rate reduction on its indebtedness to RUS." See January 24, 2000 Motion to Reopen, Exhibit B.

\$68.1 million.³ As this estimate is below the RUS-required minimum of \$70 million, Big Rivers has indicated that it would make up the difference out of available cash or by the application of prepayments already made to RUS. In addition, Big Rivers now anticipates that its annual debt service will be reduced by \$4.0 million.⁴

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that Big Rivers should be authorized to proceed with the proposed lease transaction as revised. The early payment of \$70 million on the New RUS Note and the associated \$4 million annual reduction in Big Rivers' debt service obligation to the RUS are very significant benefits. The numerous changes to the terms and conditions of the proposed lease transaction do not appear to have increased Big Rivers' potential financial exposure.

The Commission further finds that the leasing of the Wilson and Green Units to the Owner Trust, with an immediate lease back to Big Rivers, does not constitute a change in control of a utility or of the units themselves. Thus, no additional approvals are needed under KRS 278.020(4) or (5). As acknowledged by Big Rivers, this finding does not constitute an approval under KRS Chapter 278, or obviate the need for such approval, if the equity participants, the Owner Trust, or any lender as assignee of the

³ In its November 8, 1999 application, Big Rivers had initially estimated that the net cash benefit would be \$70 million, but indicated it could be as high as \$77 million. See January 24, 2000 Motion to Reopen at 4-5.

⁴ Big Rivers had originally estimated the savings from the debt payment and interest rate reduction was approximately \$5.2 million. Of that total estimate, the interest rate reduction was worth approximately \$1.2 million annually over the balance of the term of the New RUS Note. The current estimate of \$4 million annually assumes a payment to RUS of \$70 million. See January 24, 2000 Motion to Reopen at 4.

Owner Trust, assumes present responsibility for the operation of one or more of the generating units.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to execute the proposed lease transaction, as originally authorized in the November 24, 1999 Order, subject to the changes in assumptions, representations, and term sheet as described in the January 24, 2000 motion to reopen.

2. Big Rivers shall agree only to such terms, conditions, and prices that are consistent with said parameters as set out in the application, as revised by the motion to reopen.

3. No further approvals are required under KRS Chapter 278 for the equity participants, the Owner Trust, or any lender as assignee of the Owner Trust to participate in the proposed lease transaction, as revised by the motion to reopen.

4. Within 10 days of the date of this Order, Big Rivers shall file with the Commission copies of a letter from its lease counsel providing positive assurance that the proposed lease transaction, as revised by the motion to reopen, is in compliance with the applicable sections of the Internal Revenue Service Code and any guidelines, rules, or regulations promulgated by the Internal Revenue Service concerning such lease transactions.

5. Big Rivers shall file with the Commission copies of any rulings or decisions concerning the applicability of the Kentucky real estate transfer tax under KRS 142.050 to the proposed lease transaction, as revised by the motion to reopen. If such ruling or

decision causes Big Rivers to abandon the proposed transaction, notice of that decision should be included with the filing.

6. Ordering Paragraph Nos. 6 through 8 of the November 24, 1999 Order shall remain in full force and effect as if separately ordered herein.

Done at Frankfort, Kentucky, this 28th day of January, 2000.

By the Commission

ATTEST:

Executive Director