

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION, LG&E ENERGY MARKETING)	
INC., WESTERN KENTUCKY ENERGY CORP.,)	CASE NO.
WKE STATION TWO INC., AND WKE CORP. FOR)	2000-118
APPROVAL OF AMENDMENTS TO)	
TRANSACTIONS DOCUMENTS)	

O R D E R

On March 10, 2000, Big Rivers Electric Corporation (“Big Rivers”) and the LG&E Parties¹ filed an application seeking expedited approval of proposed amendments to agreements between Big Rivers and the LG&E Parties that were originally approved by the Commission in Case Nos. 97-204² and 98-267.³ The proposed amendments have been consolidated into a document referred to as a “Letter Agreement.” The changes contained in the Letter Agreement resolve numerous technical issues about the relationship between Big Rivers and WKEC under the lease transaction approved in

¹ The LG&E Parties are wholly-owned subsidiaries of LG&E Energy Corp. The subsidiaries that are co-applicants with Big Rivers are Western Kentucky Energy Corp. (“WKEC”), WKE Station Two Inc., LG&E Energy Marketing Inc. (“LEM”), and WKE Corp.

² Case No. 97-204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction, final Order dated June 11, 1998.

³ Case No. 98-267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson, final Order dated July 14, 1998.

Case Nos. 97-204 and 98-267 (“LG&E Transaction”). These issues were either unresolved at the closing date of the LG&E Transaction or have arisen during the ordinary course of business since the closing date.

Big Rivers’ board of directors has approved the Letter Agreement, as have the LG&E Parties. Big Rivers is seeking the approvals from the other parties to the LG&E Transaction. The LG&E Parties are requiring the Commission’s approval of the Letter Agreement before Big Rivers can close the proposed leveraged sale and leaseback (“leaseback transaction”) of certain Big Rivers’ generating assets.⁴ Big Rivers has also indicated that other parties to the leaseback transaction want to know what changes will occur to the LG&E Transaction documents before the closing of the leaseback transaction. The leaseback transaction is scheduled to close on March 29, 2000.

The following summarizes the changes contained in the Letter Agreement:⁵

- 1) Section I – Deals with issues of capital budgeting, inclusion of certain capital projects and improvements, clarification of the parties rights and obligations with such capital projects and improvements, and dispute resolution. Establishes capitalization guidelines based on Federal Energy Regulatory Commission (“FERC”) requirements, rather than the Rural Utilities Service (“RUS”) requirements. Defines accounting practices as generally accepted

⁴ See Case No. 99-450, Big Rivers Electric Corporation’s Application for Approval of a Leveraged Lease of Three Generating Units, final Orders dated November 24, 1999 and January 28, 2000. The leaseback transaction involves the sale and leaseback of Big Rivers’ D. B. Wilson Unit No. 1 and its Robert D. Green Units No. 1 and 2, along with associated common facilities at the Green Units’ site.

⁵ A detailed summary of all changes and the LG&E Transaction documents affected are contained in the Response to the Commission’s March 17, 2000 Order, Items 1, 6, and 10.

- accounting principles applied by companies required to report their accounts in accordance with the FERC Uniform System of Accounts (“USoA”) rather than the RUS USoA.
- 2) Section II – Establishes that generally the Letter Agreement does not apply to incremental capital costs, Henderson incremental capital costs, major capital costs, and Henderson capital costs. The Operative Documents currently in effect will continue to apply to these costs. Establishes the useful life for these types of costs and that no consideration will be given to these costs when determining the LG&E Parties’ Residual Value Payment (“RVP”).⁶
 - 3) Section III – Establishes that the RVP for capital assets and Station Two improvements will be \$125 million, if the LG&E Parties spend their share of the capital budget limits in the aggregate during the lease term. Defines the circumstances under which the \$125 million RVP can be increased or decreased. Establishes that the RVP calculation contained in the Letter Agreement generally will not apply if the lease terminates prior to December 31, 2023. Provides for an additional residual value payment for incremental capital costs, Henderson incremental capital costs, major capital repairs, and Henderson major capital repairs, determined in accordance with existing LG&E Transaction document terms.
 - 4) Section IV – Deals with issues associated with Big Rivers’ scheduling of power from the Southeastern Power Administration (“SEPA”). Affirms that LEM will continue to act as Big Rivers’ agent with SEPA.

⁶ The RVP is an end of lease term liability of Big Rivers to the LG&E Parties.

- 5) Section V – Addresses timing of payment issue for certain transmission services.
- 6) Section VI – Provides for the sale by Big Rivers of its central laboratory building, print shop, and telecommunications building to WKEC for \$325,000.
- 7) Section VII – Corrects a reference in an LG&E Transaction document.
- 8) Section VIII – Resolves a dispute over a contract issue relating to transferred employees and costs being billed by Big Rivers to WKEC. Big Rivers will refund \$268,464 to WKEC under the terms of this resolution.
- 9) Section IX – Provides that the LG&E Parties will include the equity participants in the leaseback transaction as additional insureds on insurance policies maintained by the LG&E Parties, and assurances that such policies are in place.

In its March 10, 2000 application, Big Rivers requested the Commission's approval on Sections I through V, VII, and IX of the Letter Agreement. In its responses to the Commission's March 17, 2000 Order, Big Rivers indicated that, if the Commission believes that approvals are also necessary for Sections VI and VIII of the Letter Agreement, Big Rivers seeks those approvals as well.⁷

In its Orders in Case Nos. 97-204 and 98-267, the Commission approved all the documents associated with the LG&E Transaction. The modifications, revisions, and clarifications contained in the Letter Agreement impact various LG&E Transaction documents in some manner. Consequently, the Commission finds that it should address all the sections contained in the Letter Agreement. In addition, by addressing

⁷ Response to the Commission's March 17, 2000 Order, Item 1.

all the sections of the Letter Agreement at this time, no party to the Letter Agreement or the leaseback transaction will be in doubt concerning the Commission's decision.

The Commission finds that the provisions contained in the Letter Agreement are reasonable and resolve outstanding issues associated with the LG&E Transaction. Resolution of these issues provides Big Rivers and the LG&E Parties with a degree of certainty that was not present in the LG&E Transaction documents previously. The immediate financial impact to Big Rivers is minimal, while the quantification of the RVP amount defines for Big Rivers what its obligations will be at the end of the LG&E Transaction. Therefore, the Commission approves the Letter Agreement in total.

The Commission is concerned about the continuing delays Big Rivers is experiencing with the closing of the leaseback transaction. When Big Rivers originally filed its November 1999 application for the approval of the leaseback transaction, it had estimated that the net cash benefit could be as high as \$77 million, with an annual reduction to its debt service of \$5.2 million. Due to changes in the leaseback transaction terms, applicable interest rates, and the passage of time, when Big Rivers requested the reauthorization of the leaseback transaction in January 2000, the net cash benefit estimate had dropped to \$68.1 million, and the annual reduction in debt service reduced to \$4.0 million.⁸ Big Rivers now estimates the annual reduction in its debt service from the leaseback transaction to be \$3.45 million, with the annual debt service reduction continuing to shrink for each additional month of delay in closing.⁹

⁸ See Case No. 99-450, January 28, 2000 Order, at 2-3.

⁹ Response to the Commission's March 17, 2000 Order, Item 4(d), and Application at 10. This update by Big Rivers did not include a revised estimate of the net cash benefit.

The Commission understands that the leaseback transaction is a very complex and complicated undertaking by Big Rivers. However, because the transaction benefits continue to diminish as the closing is delayed, and the RUS is still insisting on a \$70 million up-front debt payment,¹⁰ Big Rivers should evaluate the feasibility of continuing to pursue the leaseback transaction if it does not close by March 31, 2000. Therefore, the Commission will require Big Rivers to file a status report that will indicate whether Big Rivers is continuing to pursue the leaseback transaction and, if so, the current estimated net cash benefit, the current estimated reduction to its annual debt service, an explanation of any changes to the transaction, and the target date for closing the transaction. This status report will be due by the fifth day of each month, beginning on April 5, 2000, and will continue monthly until the transaction is closed, or Big Rivers determines it will no longer pursue it. The other reporting requirements ordered in Case No. 99-450 will remain in effect.

IT IS THEREFORE ORDERED that:

1. The amendments to the LG&E Transaction between Big Rivers and the LG&E Parties, as described in the Letter Agreement, are approved, and Big Rivers is authorized to execute those amendments, as described in the application.
2. The request of the LG&E Parties to deviate from any filing requirements associated with this application is granted.
3. Big Rivers shall, within 10 days of the execution of the Letter Agreement, file copies of the final executed Letter Agreement with the Commission.

¹⁰ See Case No. 99-450, January 28, 2000 Order, at 2.

4. Big Rivers shall, in the first monthly financial report filed with the Commission after the booking of the transactions described in Sections VI and VIII of the Letter Agreement, include notes to its respective financial statements explaining the effects of those transactions and the corresponding accounting entries.

5. Big Rivers shall file a monthly status report indicating whether Big Rivers is continuing to pursue the leaseback transaction approved by the Commission in Case No. 99-450. The status report shall provide the current estimated net cash benefit of the leaseback transaction, the current estimated reduction to annual debt service, an explanation of any changes to the transaction, and the target date for closing the transaction, if Big Rivers elects to continue to pursue the transaction. The first status report shall be filed with the Commission no later than April 5, 2000, and shall be filed by the fifth day of each subsequent month, until the leaseback transaction is closed or abandoned by Big Rivers.

Done at Frankfort, Kentucky, this 29th day of March, 2000.

By the Commission

ATTEST:


Executive Director