COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S	)	
APPLICATION FOR APPROVAL OF AMENDMENTS	)	CASE NO.
TO STANDBY BOND PURCHASE AGREEMENTS	)	2000-343

O R D E R

On July 3, 2000, Big Rivers Electric Corporation ("Big Rivers") filed its application requesting approval of amendments to two Standby Bond Purchase Agreements ("Standby Agreements") previously approved by the Commission in Case Nos. 97-204[1] and 98-267.[2] The Standby Agreements were included as part of the financing documents relating to the lease transaction between Big Rivers and subsidiaries of LG&E Energy Corp., which implemented Big Rivers' plan of reorganization under Chapter 11 of the United States Bankruptcy Code. By amending the Standby Agreements, Big Rivers will have an opportunity to reduce the commitment fees it is required to pay under the terms of those agreements.

Big Rivers originally financed pollution control facilities at its D. B. Wilson Generating Station ("Wilson") with proceeds from two pollution control bond ("PC bond")

[1] 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.

[2] 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.

issues sold by the County of Ohio, Kentucky.[3] At the time of bankruptcy, Big Rivers' refunding obligations under the PC bond documents were secured by two bank letters of credit.

In accordance with the bankruptcy reorganization of Big Rivers, the bank letters of credit were replaced with municipal bond insurance policies issued by Ambac Assurance Corporation ("Ambac"), which guarantee the payment of principal and interest when due on the PC bonds. In addition, Big Rivers entered into two Standby Agreements with Credit Suisse First Boston ("Credit Suisse") to provide liquidity support for the PC bond issues.[4] Ambac also issued two surety policies insuring the commitment fees payable by Big Rivers to Credit Suisse under the Standby Agreements. Big Rivers' obligation to reimburse Ambac for any payments under the municipal bond insurance policies or the surety policies was secured under the Big Rivers mortgage dated July 15, 1998 ("New RUS Mortgage"), and four notes were issued to Ambac to evidence the payment obligations.

The Standby Agreements provide that Big Rivers pay Credit Suisse an annual commitment fee. From July 17, 1998 to December 31, 1999, the commitment fee was 25 basis points per annum under each agreement, or approximately $367,500. On January 1, 2000, the commitment fee increased to 40 basis points per annum, or approximately $588,000. However, the Standby Agreements provided that if a "Fee

[3] At the date of Big Rivers' bankruptcy, the PC bond issues were identified as the $58.8 million Pollution Control Floating Rate Demand Bonds, Series 1983 ("Series 1983 Bonds"), and the $83.3 million Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 ("Series 1985 Bonds").

[4] One Standby Agreement is for the Series 1983 Bonds and the other is for the Series 1985 Bonds.

Stabilization Event" occurred prior to December 31, 1999, the commitment fees would have remained at 25 basis points. A Fee Stabilization Event was defined as one of the following actions:

1) Big Rivers causing the New RUS Mortgage to be amended to provide that all of Big Rivers' payment obligations to Credit Suisse be secured under the New RUS Mortgage on a parity with amounts owed by Big Rivers to Ambac;
2) Big Rivers obtaining from Standard and Poor's a shadow rating on its bonds, absent Ambac insurance, of investment grade or higher;[5] or
3) Big Rivers amending the bond documents to provide that if the Standby Agreements terminate after five years, the bonds would then be subject to a mandatory redemption over the next three years in six equal semi-annual installments, with the payments of the mandatory redemption price being guaranteed by Ambac.

However, Big Rivers was unable to cause a Fee Stabilization Event to take place prior to December 31, 1999. Consequently, the commitment fee increased to the 40 basis point level.

Big Rivers and Credit Suisse have agreed to amend the two Standby Agreements to provide that if a "Fee Reduction Event" takes place before December 31, 2000, the commitment fee after that date will be reset to the 25 basis point per annum

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[5] If Big Rivers and Credit Suisse agree, the shadow rating may be obtained from a rating agency other than Standard & Poor's. If the shadow rating is at least BB- or equivalent but not greater than BB+ or equivalent, the commitment fee would be set at 30 basis points per annum. If the shadow rating is investment grade (BBB- or equivalent) or higher, the commitment fee would be set at 25 basis points per annum. <u>See</u> Application, Exhibit A, page 13, Section 2.6 and Application Exhibit B, pages 13 and 14, Section 2.6.

level. The Fee Reduction Events described in the amendments to the Standby Agreements are essentially the same as the Fee Stabilization Events contained in the Standby Agreements.[6] In its application, Big Rivers states that it has determined that the Fee Reduction Event that has the best likelihood of success is the revision of the New RUS Mortgage to include Credit Suisse as a mortgagee. If successful, Big Rivers has estimated it would save approximately $220,500 annually in commitment fees associated with the Standby Agreements.[7]

The Commission finds that the provisions contained in the amendments to the Standby Agreements are reasonable and provide Big Rivers with the opportunity to reduce its costs. The expected annual commitment fee savings will provide an on-going benefit to Big Rivers, as the PC bonds are not due to mature for at least another 13 years.[8] Therefore, the Commission finds the amendments to the Standby Agreements to be reasonable and will approve them.

Big Rivers also requested the Commission to find that any filing requirements under 807 KAR 5:001, Section 11, that have not been satisfied are either not applicable

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[6] See Application, Exhibit C, page 2, Section 1, and Application Exhibit D, page 2, Section 1. The "Fee Reduction Event" differs from the "Fee Stabilization Event" in two areas. First, under the shadow bond rating event, the rating must be investment grade (BBB- or equivalent) or higher to receive the 25 basis point per annum commitment fee. The alternative commitment fee reduction for ratings between BB- and BB+ or the equivalent, is not included in the amendments. Second, if the Standby Agreements terminate after five years, the bonds would then be subject to a mandatory redemption over the next five years in 10 equal semi-annual installments.

[7] Application at 6.

[8] The Series 1983 Bonds are due to mature on June 1, 2013; the Series 1985 Bonds are due to mature on October 1, 2015. See Application, Exhibit A, page 6, definition of "Expiration Date" and Exhibit B, page 6, definition of "Expiration Date."

under the circumstances of this case or, in the alternative, should be waived by a deviation under 807 KAR 5:001, Section 14.[9] Since this application only deals with amendments to existing evidences of indebtedness that were recently approved, the Commission finds it reasonable to grant Big Rivers' request to deviate from the filing requirements of 807 KAR 5:001, Section 11.

In approving these amendments, the Commission will leave the decision as to which Fee Reduction Event to pursue to Big Rivers' management. However, as the Fee Reduction Event must occur prior to December 31, 2000, the Commission will require Big Rivers to file a written report no later than October 31, 2000 on its efforts and progress to achieve the Fee Reduction Event. Big Rivers is also reminded that any further applications relating to the accomplishment of a Fee Reduction Event must be submitted in a timely fashion that allows adequate time for investigation and review. Big Rivers should also notify the Commission in writing within 10 days of making a determination that a Fee Reduction Event cannot be accomplished prior to December 31, 2000.

IT IS THEREFORE ORDERED that:

1. The amendments to the Standby Agreements between Big Rivers and Credit Suisse, as described in the application, are approved.

2. The request of Big Rivers to deviate from the filing requirements of 807 KAR 5:001, Section 11, is granted.

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[9] Specifically, Big Rivers did not provide the original cost of its property or a financial exhibit.

3. Big Rivers shall, no later than October 31, 2000, inform the Commission in writing of the efforts and progress to accomplish the Fee Reduction Event and shall notify the Commission in writing within 10 days of making a determination that the Fee Reduction Event will not occur.

Done at Frankfort, Kentucky, this 25th day of August, 2000.

By the Commission

ATTEST:

Thomas M. Dorman

Executive Director