

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST OF BIG RIVERS ELECTRIC)	CASE NO.
CORPORATION FOR DISCLAIMER OF)	2009-00018
JURISDICTION)	

O R D E R

On January 12, 2009, Big Rivers Electric Corporation (“Big Rivers”) filed a letter, which the Commission will treat as an application, requesting a determination that no approval is needed for Big Rivers to issue to the National Rural Utilities Cooperative Finance Corporation (“CFC”) a Letter of Credit Application and Agreement (“2009 Letter of Credit Agreement”) and a Letter of Credit Reserve Authorization. A copy of both documents was attached to Big Rivers’ application.

The Commission previously determined in 2003 that no prior approval was needed for Big Rivers to enter into a \$15 million, 10-year renewal of a revolving credit facility with CFC.¹ The Commission’s finding was based on the fact that the CFC credit facility required all loans outstanding to be paid off for at least 5 days in every 12 months and prohibited the renewal or rolling over of those loans. Thus, the credit facility

¹ Case No. 2003-00240, Big Rivers Electric Corporation’s application for approval to amend evidences of indebtedness, Order dated June 24, 2003.

qualified for an exemption from Commission approval under KRS 278.300(8), which exempts evidences of indebtedness that are payable in less than two years.²

The 10-year revolving credit facility with CFC is a line of credit in the amount of \$15 million in favor of Big Rivers. In conjunction with this line of credit, Big Rivers had a 5-year Letter of Credit Agreement with CFC which allows Big Rivers to require CFC to issue a letter of credit to a third party to secure Big Rivers' performance, such as under a wholesale power contract. That Letter of Credit Agreement has expired, and Big Rivers now intends to enter into an identical agreement for one year, along with a Letter of Credit Reserve Authorization, which authorizes CFC to pay the letter of credit with funds drawn on Big Rivers' revolving credit facility. Big Rivers will incur an annual fee for the 2009 Letter of Credit Agreement in the amount of \$150,000 and an issuance fee of 10 basis points times the amount of the letter of credit issued.

Based on a review of the application and being otherwise sufficiently advised, the Commission finds that the 2009 Letter of Credit Agreement and the Letter of Credit Reserve Authorization constitute evidences of indebtedness which are exempt from Commission approval under KRS 278.300(8) because they must be paid down to zero for at least 5 consecutive business days within each 12-month period. Consequently, no approval is needed for Big Rivers to proceed with this financing transaction.

IT IS THEREFORE ORDERED that Big Rivers' issuance to CFC of a 2009 Letter of Credit Agreement for a one-year term and a Letter of Credit Reserve Authorization is exempt from Commission approval under KRS 278.300(8).

² The Commission did, however, assert jurisdiction over certain financing documents, including a revised mortgage, that had previously been approved by the Commission in earlier proceedings.

Done at Frankfort, Kentucky, this 25th day of February, 2009.

By the Commission

ATTEST:



Executive Director

Case No. 2009-00018

Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727