COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A GENERAL ADJUSTMENT IN RATES	)))	CASE NO. 2009-00040

INTERIM ORDER

Pending before the Commission is a request by Big Rivers Electric Corporation ("Big Rivers") for an interim increase in base electric rates during the five-month suspension of the rates proposed in its application for a general rate adjustment. Due to Big Rivers' inability to justify its need for this extraordinary relief, the Commission denies Big Rivers' request for interim rate relief.

PROCEDURAL BACKGROUND

Big Rivers is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. It owns electric generation facilities, and purchases, transmits and sells electricity at wholesale. Its principal purpose is to provide wholesale electric service to its three distribution cooperative member-owners, Kenergy Corp., Meade County Rural Electric Cooperative Corporation, and Jackson Purchase Energy Corporation (collectively "Member Coops"). The Member Coops provide retail electric service to approximately 111,000 customers in 22 Western Kentucky counties.[1]

[1] Application, Pages 1–2.

On March 2, 2009, Big Rivers submitted an application for filing requesting an adjustment of electric rates in order to produce an additional $24.9 million in annual revenues, which would be a 21.6 percent increase over normalized test-year sales. Upon request, the Commission granted intervention to the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC").

Anticipating that the Commission would suspend the proposed permanent rates for five months to investigate their reasonableness, Big Rivers requested that its proposed rates become effective on an interim basis for service rendered on and after April 1, 2009. Big Rivers argues that, absent interim rate relief, it will not have adequate cash reserves to make a December 15, 2009 debt payment to Phillip Morris Credit Corporation ("PMCC") in the amount of $12.4 million and a January 4, 2010 debt payment to Rural Utility Service ("RUS") in the amount of $15.8 million.[2]

Big Rivers requested that its proposed permanent rates become effective for service rendered on and after April 1, 2009. To allow time to investigate the reasonableness of Big Rivers' proposed permanent rates, the Commission, by Order dated March 16, 2009, suspended the proposed effective date until September 1, 2009, pursuant to KRS 278.190(2). The Commission also appended two procedural schedules to its March 16, 2009 Order: Appendix A to investigate the request for interim rate relief and Appendix B to investigate the request for permanent rate relief.

The procedural schedule to investigate the request for interim rates provided for one round of discovery on Big Rivers' interim rate request, an evidentiary hearing on

[2] Application, Exhibit 46, Page 6.

March 26, 2009, and an opportunity for intervenors to present testimony at the hearing. The only intervenor to present testimony was KIUC. Big Rivers, the AG and KIUC filed simultaneous briefs on April 8, 2009 as directed by the Commission.

The Commission's findings and rulings in this Order apply only to Big Rivers' request for interim rate relief. The Commission will continue to process Big Rivers' request for a permanent rate increase in accordance with the procedural schedule adopted as Appendix B to the March 16, 2009 Order.

LEGAL STANDARD

The statutory basis for interim rate relief is set forth in KRS 278.190(2). That statute provides, in relevant part, as follows:

> [I]f the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the [suspension] period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.

As the applicant, Big Rivers has the burden to demonstrate that its credit or operations will be materially impaired or damaged in the absence of interim rate relief.

DISCUSSION

Big Rivers has stated that this rate application will be withdrawn if it is able to reacquire operational control of its generating assets in conjunction with the "Unwind

Transaction"[3] approved in Case No. 2007-00455.[4] If the Unwind Transaction closes, Big Rivers expects to recognize cash and non-cash benefits of $755.9 million,[5] resulting in a significantly improved financial position and eliminating the need for this request for a rate increase.

To support its claim of insufficient cash to pay $15.8 million to RUS on January 4, 2010, Big Rivers analyzed its historic and projected cash receipts and disbursements.[6] That analysis shows a negative $13.8 million cash balance on January 5, 2010 absent a rate increase and a positive $2.8 million cash balance if the proposed rates go into effect for service rendered on and after April 1, 2009. Even with the rate increase, Big Rivers states that it will be required to defer 2009 budgeted expenditures for incremental right-of-way clearing, expanded energy efficiency programs and certain capital expenditures in order to meet the projected cash balance.[7]

Big Rivers explains that, until recently, it has maintained adequate cash reserves, but that reserve was greatly depleted on September 20, 2008, when it made a $109.3

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[3] Application, Page 3, Lines 4 - 6.

[4] The Applications of Big Rivers Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. for Approval of Transactions (Ky. PSC March 6, 2009).

[5] <u>See</u> Commission's Final Order dated March 6, 2009 in Case No. 2007-00455.

[6] Application, Exhibit 47, Pages 40 and 41.

[7] <u>Id.</u> at 42.

million cash payment to PMCC to terminate a leveraged lease.[8] This payment, coupled with recent debt principal and interest payments and capital expenditures, reduced Big Rivers' cash balance to $25.7 million at the time it filed this application.[9]

Big Rivers' application states that it has no ability to borrow long-term funds due to its weak financial condition and its primary lender, RUS, has refused to lend additional funds or subordinate its security interest.[10] According to Big Rivers, its only source of cash, other than cash on hand, is a $15 million line of credit with National Rural Utilities Cooperative Finance Corporation ("CFC"), which must be paid down to a zero balance at least once a year.[11] This line of credit is needed by Big Rivers to "meet margin calls required by its power trading counterparties" and is the "sole backstop for <u>any</u> new cash need, including unanticipated costs."[12] (Emphasis in original). Therefore, Big Rivers argues that it would not be prudent to rely on this line of credit for daily cash working capital requirements.

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[8] Big Rivers entered into a leveraged lease with PMCC in 2000. Ambac Assurance Corporation ("Ambac") provided credit support for the leveraged lease. When Ambac's credit rating was downgraded, Big Rivers was obligated to either buy out the leveraged lease or provide alternative credit support. Big Rivers determined that its least costly option was a buy out, consisting of an immediate cash payment of $109.3 million and a December 15, 2009 payment of $13.4 million. <u>See</u> Commission's Final Order in Case No. 2007-00455 dated March 6, 2009, Page 8.

[9] Application, Exhibit 47, Page 39.

[10] <u>Id.</u> at 39 and 40.

[11] <u>Id.</u> at 40.

[12] Big Rivers' Brief, Page 9.

For these reasons, Big Rivers requests that its proposed rates be made effective on an interim basis for services rendered on and after April 1, 2009 in order to generate $16.6 million in additional revenue by January 4, 2010. Big Rivers maintains that any delay in implementing its proposed rates will necessitate higher interim rates to generate the same $16.6 million in additional revenue it believes is needed by January 4, 2010.

At the March 26, 2009 hearing, Big Rivers updated its financial information to show that implementing its proposed rates on April 1, 2009 results in a cash balance of $8.5 million, not the previously projected $2.8 million, after the RUS payment on January 4, 2010. The higher cash balance is achieved through additional cost reductions.[13] Big Rivers argues that this higher balance of $8.5 million is necessary to offset the uneven nature of its cash receipts and disbursements and to have sufficient cash to pay daily operating expenses from January 5, 2010, to January 20, 2010.[14]

KIUC recognizes that Big Rivers' cash reserves were "depleted" by the PMCC leveraged lease buy-out,[15] but it does not believe that rate relief is needed on April 1, 2009, in order for Big Rivers to make its RUS payment on January 4, 2010. KIUC states that the low point in Big Rivers' projected cash balance will be on January 5, 2010—the day after making the RUS payment.[16] KIUC notes that Big Rivers originally

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[13] Big Rivers' Brief, Page 6.

[14] Id. at 7.

[15] KIUC's Brief, Page 3.

[16] Id. at 6.

projected this low point to be $2.8 million if the proposed rates were made effective on April 1, 2009, but Big Rivers later revised this amount to $8.5 million. KIUC argues that, based upon Big Rivers' revised cash projections, the effective date for interim rates can be delayed by three months and still result in a projected cash balance of $2.5 million on January 5, 2010.[17] KIUC continues by stating that, if Big Rivers' cash projections are incorrect and adequate funds are not available on January 5, 2010, Big Rivers could temporarily borrow against its CFC line of credit to meet short-term cash needs.[18] Also, KIUC suggests that based upon Big Rivers' "tremendously strong income statement",[19] it may be able to borrow $10 million to $15 million[20] in unsecured loans from its general purpose banking provider, Old National Bank. Big Rivers acknowledges that it has not contacted Old National Bank to discuss the possibility of obtaining any unsecured loans.[21]

KIUC also questions the reasonableness of Big Rivers' cash projections since they are based on proposed pro forma adjustments that significantly reduce test-year

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[17] Id. at 5.

[18] Id. at 9.

[19] March 26, 2009 Hearing Transcript, Page 173.

[20] Id. at 186.

[21] Id. at 64.

Non-Tariff Energy Sales.[22] KIUC claims that these adjustments are contrary to Big Rivers' internal budget reports and may be inconsistent with other adjustments which increase wholesale purchased power costs.[23] Noting the significance of these adjustments to Big Rivers' overall revenue deficiency, KIUC states that if any or all of these adjustments ultimately prove to be unfounded and are ultimately rejected by the Commission in its final Order in this case, then Big Rivers' interim rate relief would be unneeded.[24]

The AG supports KIUC's arguments and also asserts that Big Rivers has taken sufficient cost-deferral and cost-containment actions to delay implementing interim rates until it is known whether or not the Unwind Transaction will close. The AG recommends delaying interim rates until at least June 30, 2009 to allow the Unwind Transaction to close.[25]

FINDINGS

The Commission finds that Big Rivers' cash reserves were depleted by the $109 million cash buyout of the PMCC leveraged lease; that Big Rivers' current financial position is poor as evidenced by its negative equity position; and that a base rate

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[22] In its Application, Exhibit 46, Seelye-2, Schedule 1.11, Big Rivers shows a reduction to Accounts 447.171–447.299 in the amount of $21,712,149, which is a 26 percent decrease to the amount reported in these accounts during the test year of $82,316,867 as shown in Big Rivers' Response to Commission Staff's First Data Request, Item 19. a., Page 6.

[23] KIUC's Brief, Page 10.

[24] Id. at 11.

[25] AG's Brief, Pages 3 - 5.

increase may be necessary if the Unwind Transaction does not close. However, if the Unwind Transaction does close, Big Rivers should have a more reasonable level of cash reserves; its equity balance should be significantly improved; and it will request to withdraw its application for interim and permanent rate relief. Big Rivers is optimistic that the Unwind Transaction will close after May 19, 2009 and has been diligently working to do so.[26] Nevertheless, Big Rivers filed this rate application to increase its cash balance in the event the Unwind Transaction does not close.

The 21.6 percent interim rate increase sought by Big Rivers is based upon its projected pro forma annual cash revenue deficiency of $24.9 million as of the March 2, 2009 filing date. Big Rivers argues that interim rate relief is needed on April 1, 2009 to generate $16.6 million in additional revenue by January 4, 2010 so it will be able to pay its RUS debt. Big Rivers states that any delay in the effective date beyond April 1, 2009 will result in the need for a higher percentage rate increase. The Commission finds that Big Rivers' position is not supported by the updated cash balance projections it provided at the March 26, 2009 hearing. This updated information shows that Big Rivers would have a positive cash balance after making the RUS debt payment on January 4, 2010 if the effective date of a 21.6 percent increase were delayed until August 1, 2009.[27]

The Commission recognizes that a possible 21.6 percent increase made effective for services rendered on and after August 1, 2009 could result in a projected

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[26] See letter from Big Rivers and E.ON U.S. LLC filed on May 14, 2009 in Case No. 2007-00455.

[27] $8.5 million cash balance with April 1 effective date / $2.075 million monthly increase from 21.6 percent increase = up to 4.1 month delay from April 1 and cash balance remains positive after RUS payment on January 4.

cash balance that is even lower than Big Rivers requested. While the Commission shares many of Big Rivers' concerns regarding its level of cash reserves, it has not demonstrated that interim rate relief is its only available source of working capital. Big Rivers may be able to use the $15 million CFC line of credit on a temporary basis to meet short-term cash working capital needs, a fact reinforced by Big Rivers' acknowledgement that the CFC line of credit is a backstop for new cash needs.[28] In addition, Big Rivers has not pursued the use of short-term, unsecured borrowings through Old National Bank.

Based upon the evidence of record, the Commission finds that Big Rivers has not shown that interim rate relief is needed at this time to avoid a material impairment or damage to its credit or operations. Thus, the request for interim rate relief is denied at this time without prejudice.

IT IS THEREFORE ORDERED that Big Rivers' request to place its proposed rates into effect on an interim basis for service rendered on and after April 1, 2009 is denied without prejudice.

By the Commission

ENTERED
MAY 27 2009
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

[28] Big Rivers' Brief, Page 9.

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