

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS)	CASE NO.
)	2014-00423
)	

ORDER

On December 3, 2014, Big Rivers Electric Corporation (“Big Rivers”) submitted its request seeking Commission approval to replace its existing \$50 million Revolving Line of Credit Agreement dated August 19, 2013, (“2013 Revolver”) with the National Rural Utilities Cooperative Finance Corporation (“CFC”) with a \$130 million Senior Secured Credit Agreement (“Secured Credit Agreement”) with CFC and other lenders. Among other things, the Secured Credit Agreement increases the credit available to Big Rivers for operations and provides up to \$30 million of interim financing for construction of projects included in its approved environmental compliance plan.¹

Big Rivers entered into the 2013 Revolver with CFC for the purpose of securing funds for capital expenditures, general corporate use, and the issuance of letters of credit. Total commitment under the 2013 Revolver is \$50 million, which includes up to \$10 million in letters of credit. Advances under the 2013 Revolver are secured by a note from Big Rivers to CFC in the amount of \$50 million, which is secured under the July 1, 2009 Indenture between Big Rivers and U.S. Bank National Association.

¹ The projects were approved in Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account* (Ky. PSC Oct. 1, 2013).

BACKGROUND

Big Rivers is an electric generation and transmission cooperative, organized under KRS Chapter 279, which owns electric generation and transmission facilities, and purchases, transmits and sells electricity at wholesale. It exists for the primary purpose of supplying the wholesale electricity requirements of its three distribution cooperative members, Kenergy Corp., Jackson Purchase Energy Corporation, and Meade County Rural Electric Cooperative Corporation (collectively "Members"), who sell electricity at retail to approximately 114,000 retail members in 22 western Kentucky counties.

BIG RIVERS' PROPOSAL

According to its application, Big Rivers seeks approval to issue the following new or amended evidences of indebtedness:

a. The Secured Credit Agreement with the lenders that are parties thereto, CFC as administrative agent, lead arranger, issuing lender, and swingline lender and Regions Bank as syndication agent;

b. Notes (the "Notes") from Big Rivers to the various lenders to the Secured Credit Agreement in an aggregate amount not to exceed \$130 million; and

c. A fifth supplement to the Indenture (the "Supplemental Indenture") from Big Rivers to U.S. Bank National Association, trustee.

The terms of the evidences of indebtedness Big Rivers proposes to issue include the following:

a. One or more of the Notes will be issued to each of the lenders who are a party to the Secured Credit Agreement under which each lender will have a commitment to make revolving loans and participate in letters of credit. The principal

amount of each Note issued to each lender will be equal to the amount of the lender's commitment. The maturity date of the Notes and Secured Credit Agreement will be three years after the effective date of the Secured Credit Agreement.

b. Big Rivers is required to deliver to CFC and the other lenders evidence satisfactory to them that it has filed an application with the Rural Utilities Service ("RUS") for up to \$30 million in long-term debt financing for the environmental projects approved in Case No. 2012-00063.²

c. There are four outstanding letters of credit under the 2013 Revolver in an aggregate amount of \$8,594,325. These will be brought over as letters of credit under the Secured Credit Agreement and will initially reduce the amount available for letters of credit under the Secured Credit Agreement, which cannot exceed \$50 million.

d. The Secured Credit Agreement will terminate three years after its effective date which, based on the schedule to close the proposed transaction prior to April 1, 2015, will be near the end of the first quarter of 2018. In the absence of the proposed transaction, the 2013 Revolver will expire July 16, 2017.

e. Under the 2013 Revolver, in order to make an advance, Big Rivers must certify that its available cash balance is less than \$35 million, and it must use excess cash to pay outstanding principal balances. There are no such requirements in the proposed Secured Credit Agreement.

f. If funds have been advanced under the Secured Credit Agreement to pay for Big Rivers' approved environmental projects, upon receipt of RUS loan funds Big Rivers will be obligated to prepay said advances.

² Case No. 2012-00063, *Big Rivers Electric Corporation* (filed Apr. 2, 2012), Application at 5. Big Rivers submitted its RUS financing request on October 10, 2014.

g. Big Rivers can request a revolving loan or swingline loan under the Secured Credit Agreement which, at its request, may be LIBO loans, ABR loans, or a combination of both types of loans.³ When a borrower does not have enough lead time to request a revolving loan, it may request a swingline loan. Swingline loans can be requested by 11:00 a.m. and funds will be received by Big Rivers by 3:00 p.m. on the same day. Under the Secured Credit Agreement, the principal amount of swingline loans may not exceed \$25 million.

h. The Notes will be issued pursuant to and secured under the Supplemental Indenture.

i. Big Rivers' up-front cost related to the evidences of indebtedness it proposes will be \$455,000 plus legal fees for counsel of Big Rivers, CFC, and other lenders, and miscellaneous filing fees and transaction costs that cannot be determined until the time of closing.

j. Big Rivers is obligated to pay an annual facility fee for each lender based on each lender's commitment. The amount, which can fluctuate based on Big Rivers' credit ratings, would be \$487,500 as of November 24, 2014.

k. Under the Secured Credit Agreement, annual letter of credit fees are payable. As of November 24, 2014, based on Big Rivers' outstanding letters of credit of approximately \$8.6 million, the fees would have been \$193,500.

l. Big Rivers is required to pay CFC a one-time lead arranger fee of \$25,000 and an annual administrative agent fee of \$20,000.

³ LIBO stands for London Interbank Offer; ABR stands for Alternate Base Rate. Both terms are defined in the Secured Credit Agreement. The LIBO and ABR interest rates are defined in the Secured Credit Agreement.

m. Big Rivers will be required to achieve a minimum Margin for Interest Ratio for each fiscal year and maintain a minimum Members' Equity balance as of the end of each calendar quarter and the last day of the fiscal year during the term of the Secured Credit Agreement.

DISCUSSION OF ISSUES AND FINDINGS

The Secured Credit Agreement will permit Big Rivers to have access to an additional \$80 million in liquidity for its operations. In response to the downgrading of its credit ratings to below investment grade due to the announced loss of the smelter loads it had historically served, Big Rivers submitted a Corrective Plan to Achieve Two Ratings of Investment Grade to RUS on March 7, 2013. Among the areas on which the rating agencies focus is Big Rivers' access to and maintenance of liquidity, making liquidity an important component of this corrective plan.

In the Final Order in Case No. 2012-00492⁴ approving Big Rivers' request to issue new evidences of indebtedness in connection with refunding by purchase of County of Ohio, Kentucky Pollution Control Floating Rate Demand Bonds, Series 1983, the Commission stated:

Removing the uncertainty regarding Big Rivers' ability to purchase the 1983 bonds without impairing its liquidity is a step that we believe should be viewed favorably by Big Rivers' lenders, its auditor, the credit rating agencies which monitor both its financial and operations risks, and the 112,000 customers who rely on its generation and transmission facilities.⁵

⁴ Case No. 2012-00492, *Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness* (Ky. PSC Mar. 26, 2013).

⁵ *Id.* at 5.

The Commission believes the approval of Big Rivers' proposal in this proceeding should also be viewed favorably by those same constituencies. Providing Big Rivers with access to \$130 million of liquidity for roughly three years can assist in facilitating its ability to regain its investment-grade credit ratings.

In addition, the Secured Credit Agreement provides Big Rivers with up to \$30 million in interim financing for the construction of environmental projects contained in its approved environmental compliance plan. Furthermore, the Secured Credit Agreement provides for an increase, from \$10 million to \$50 million, in the principal amount of letters of credit that can be outstanding at any one time.

FINDINGS

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Big Rivers' proposed financing is for lawful objectives within the corporate purposes of Big Rivers' utility operations, is necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair its ability to perform that service, is reasonable, necessary and appropriate for such purposes, and should be approved.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to enter into the Secured Credit Agreement as described in its application.
2. Big Rivers is authorized to issue notes to CFC and other lenders that are parties to the Secured Credit Agreement in an aggregate amount not to exceed \$130 million.

3. Big Rivers is authorized to issue the fifth Supplemental Indenture to the Indenture to U.S. Bank National Association, trustee, as described in its application.

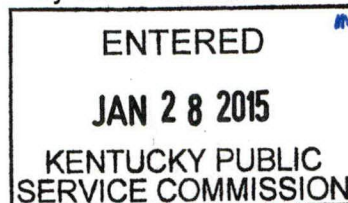
4. The total amount of "upfront costs" that Big Rivers may incur in connection with the issuance of the proposed evidences of indebtedness is \$455,000.⁶

5. Within ten days of its execution of these evidences of indebtedness, as listed here in ordering paragraphs 1, 2, and 3, Big Rivers shall file with the Commission three copies of each document.


6. Any documents filed pursuant to ordering paragraph 5 shall reference this case number and shall be retained in Big Rivers' general correspondence file.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission



ATTEST:



Executive Director

⁶ Application at 13, paragraph 5.

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