

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.
)	2017-00281
)	

ORDER

On July 21, 2017, Big Rivers Electric Corporation (“Big Rivers”) filed an application seeking Commission approval to issue certain evidences of indebtedness for a loan in the amount of \$15,000,000 from the National Rural Utilities Cooperative Finance Corporation (“CFC”); for approval to issue its Eighth Supplemental and Amendatory Indenture (“Eighth Supplemental Indenture”) to the Indenture dated July 1, 2009, between Big Rivers and the United States (“U.S.”) Bank National Association (“Indenture”) for two loans from the Federal Financing Bank (“FFB”) to be guaranteed by the Rural Utilities Service of the U.S. Department of Agriculture (“RUS”); and for approval of other amendments.

On August 17, 2017, Commission Staff issued a request for information (“Staff’s First Request”) to Big Rivers to clarify certain issues in this case. Big Rivers filed its responses to Staff’s First Request on August 28, 2017. There are no intervenors in this case, and the matter is submitted to the Commission for a decision based upon the evidentiary record.

CFC Loan

Big Rivers is requesting to enter into a new loan contract of \$15,000,000 with CFC under the CFS's Advantage Program. The loan will be used in its entirety to prepay a portion of the outstanding principal balance of the RUS 2009 Promissory Note Series A ("RUS A Note"). Under the Advantage Program, CFC will immediately sell the new loan to a third party, in this case the Federal Agricultural Mortgage Corporation ("Farmer Mac").¹ Big Rivers states the Advantage Program allows Big Rivers to build a relationship with another lender, providing a possible additional credit option in the future, and also allows Big Rivers to save interest on a portion of the RUS A Note.² Big Rivers proposes to borrow \$15,000,000 at an interest rate estimated to be 3.5 percent for the purpose of paying down a portion of RUS debt that carries an interest rate of 5.75 percent. The RUS A Note's terms allow for prepayments in any amounts without penalty; the proposed repayment will reduce the outstanding principal balance of the RUS A Note from \$80,456,000 to \$65,456,000.³ Big Rivers also filed the Seventh Supplemental Indenture to supplement the Indenture dated July 1, 2009, between Big Rivers and U.S. Bank National Association as evidences of Big Rivers' promise to pay the loan on the terms established in the CFC Credit Agreement.⁴

Conditions on the CFC loan are set forth in the CFC Credit Agreement⁵ and include that: 1) Big Rivers is to pay CFC's expenses; 2) the loan will be sold to Farmer Mac

¹ Application, paragraph 5.

² Application, Exhibit 4 at 5, and Big Rivers' Response to Staff's First Request, Item 2.

³ *Id.* at 6.

⁴ Application, Exhibit 3.

⁵ *Id.*, Exhibit 2.

simultaneously with the funding of the CFC loan to Big Rivers; and 3) the loan will amortize on a level principal basis based on a ten-year amortization schedule with a balloon payment on the maturity date in 2020.⁶ Prior to closing, Big Rivers will provide CFC a Notice of Election selecting a fixed interest rate and fixed-rate term or a London Interbank Offered Rate (“LIBOR”) rate for the loan.⁷ Big Rivers expects to incur legal and recording fees of \$55,000 and payment of CFC expenses of \$35,000.⁸ An interest rate of 3.5 percent was used by Big Rivers in its application and is based on an April 5, 2017 term sheet provided by CFC.⁹ Big Rivers provided a cash flow analysis which indicates that the refinancing at an interest rate of 3.5 percent would save \$540,798 over the life of the proposed loan, resulting in a positive net present value cash flow of \$707,540.¹⁰ With the inclusion of the \$90,000 in closing costs, Big Rivers estimates a savings of \$450,798 over the life of the proposed loan and a net present value of \$617,541 at 3.5 percent.¹¹

RUS Loans

Big Rivers requests authority to issue its Eighth Supplemental Indenture to the July 1, 2009 Indenture between Big Rivers and the U.S. Bank National Association for two loans from the FFB to be guaranteed by RUS.¹² The Eighth Supplemental Indenture

⁶ *Id.*, Exhibit 4 at 7. Also see the Application, Exhibit 2, Schedule 3.01 for payment schedule.

⁷ *Id.* at 8. Also see the Application, Exhibit 2, Exhibit A, Interest Rate Rider.

⁸ Staff’s First Request, Item 5.

⁹ *Id.*, Item 7.b.

¹⁰ *Id.*, Item 3.b. In its Application, Big Rivers stated that the nominal savings would be approximately \$600,000. based on an interest rate of 3.4 percent.

¹¹ *Id.*, Item 3.c.

¹² Application, Exhibit 5.

secures the issuance in the amount of \$25,630,000 of the Future Advance Promissory Note – W8 to the FFB and the reissuance of the Reimbursement Note – W8 of the same amount to RUS (collectively, “W8 loan”). The Eighth Supplemental Indenture also secures the issuance of the Future Promissory Notes – X8 in the amount \$20,511,000 to the FFB and the Reimbursement Note – X8 of the same amount to be issued to RUS (collectively, “X8 loan”). In its application, Big Rivers stated that these transactions are important in that the company has reestablished access to the RUS loan program for the first time since its 1998 reorganization, and such access to the RUS loans provides an excellent option for low-cost financing while Big Rivers’ credit ratings are below investment grade.¹³

The W8 loan is intended to finance the costs of environmental equipment upgrade projects as approved in Case No. 2012-00063.¹⁴ These projects are completed and were paid for out of Big Rivers’ general funds.¹⁵ The W8 loan will reimburse Big Rivers’ general funds account. The X8 loan is to finance Big Rivers’ approved 2013-2015 Transmission Construction Work Plan, as amended.¹⁶ To date, all but two projects have been completed, and the remaining two projects are expected to be completed prior to receipt of the X8 loan proceeds. All projects, including the two yet to be completed, have been

¹³ *Id.*, Exhibit 4 at 11.

¹⁴ 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, 2012).

¹⁵ Response to Staff’s First Request, Item 9.

¹⁶ *Id.*, Item 10.c. A copy of Big Rivers’ approved 2013-2015 Transmission Construction Work Plan and its amendment is filed under confidentiality.

funded with Big Rivers' general funds and, similarly to the W8 loan, the loan proceeds will reimburse Big Rivers' general funds. The terms of both loans have not been finalized; however, Big Rivers requested amortizing the W8 and X8 loans for 15 years and 28 years, respectively. The interest rate applied will be the RUS standard rate available at the time of funding.¹⁷ Big Rivers estimates closing costs of \$41,000 for both loans. These costs will be deferred and amortized over the life of the loans.¹⁸

Big Rivers states that the RUS Loan transactions are subject to the supervision or control of the RUS and are not subject to the jurisdiction of the Commission under KRS 278.300, and that the Commission needs to approve only the Eighth Supplemental Indenture.¹⁹ In addition to the RUS Loan transactions, the Eighth Supplemental Indenture provides in Article 11 for an amendment to the Indenture definition of "Retired." The amendment provides that the value of retired property that the Commission allows Big Rivers to place in a regulatory or similar asset, and recover through rates, will be excluded from the definition of "Retired." Big Rivers states that this amendment to the Indenture removes an impediment to the potential sale or retirement of Big Rivers' Coleman Plant, or any other assets, and allows Big Rivers to complete Recommendation No. 5 in the Action Plan from the Focused Management Audit of Big Rivers Electric Corporation.²⁰ Big Rivers is also issuing the First Amended and Restated Consolidated

¹⁷ *Id.*, Item 8.

¹⁸ Application, Exhibit 4 at 14.

¹⁹ *Id.*, paragraph 8.

²⁰ *Id.*, Exhibit 4 at 13. Focused Management and Operations Audit of Big Rivers Electric Corporation prepared for The Kentucky Public Service Commission by concentric Energy Advisors, December 8, 2015.

Loan Contract (“RUS 2017 Loan Contract”) between Big Rivers and the U.S. The RUS 2017 Loan Contract recognizes and authorizes the RUS Loans.²¹

DISCUSSION

The Commission has reviewed the proposed refinancing and finds Big Rivers’ proposal to enter into a new loan contract of \$15,000,000 with CFC under the Advantage Program to be reasonable due to the lower effective interest rate and cash flow savings Big Rivers would see over the period of the loan. The Commission commends Big Rivers for taking advantage of the financing alternatives available to it, thereby securing savings for itself and its members. The Commission has also reviewed the Eighth Supplemental Indenture to the Indenture for two loans from the FFB to be guaranteed by RUS and the additional amendments and finds the Eighth Supplemental Amendment to be reasonable.

The closing date for the proposed financing will be set following receipt of the authority from the Commission. The Farmer Mac credit approval for purchase of the CFC Loan expires October 24, 2017; therefore, Big Rivers requests Commission approval on or before September 19, 2017.²²

The final conditions of the CFC and RUS loans will not be known until the refinancing transaction is finalized. Big Rivers should therefore provide the Commission with the final, executed versions of all financing documents, along with a list of the changes, if any, that have been made within ten days of finalizing the transaction. In

²¹ *Id.*

²² *Id.*, paragraph 10.

addition, Big Rivers should provide an updated version of the response to Staff's First Request, Items 3.a. and 3.b. reflecting the cash flow analysis of the new CFC loan.

The Commission, after consideration of the evidence of record and being sufficiently advised, finds that:

1. The proposed loan from CFC is for lawful objects within the corporate purposes of Big Rivers, is necessary and appropriate for, and consistent with, the proper performance by the utility 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.

2. Big Rivers should issue the Eighth Supplemental Indenture as security for the proposed loan in the manner described in its application.

3. Within ten days of finalizing the refinancing transaction, Big Rivers should notify the Commission in writing of the exact amount of the new CFC loan. Big Rivers should include with the notice an updated version of Staff's First Request, Items 3.b. and 3.c., reflecting the savings based on the actual amount of the new CFC loan and legal fees.

4. Within ten days of the execution of the new CFC loan documents, Big Rivers should file with the Commission one copy in paper medium and an electronic version of the loan documents.

5. The proceeds from the proposed loan should be used only for the lawful purposes set out in Big Rivers' application.

6. The terms and conditions of the new CFC loan should be consistent with the CFC Advantage program as described in Big Rivers' application.

7. The Eighth Supplemental Indenture and the RUS 2017 Loan Contract are found to be reasonable. Big Rivers should file with the Commission one copy in paper medium and an electronic version of the finalized Eighth Supplemental Indenture within ten days of finalizing the RUS Loan transactions.

8. Within ten days of the execution of the new RUS Loan documents, Big Rivers should file with the Commission one copy in paper medium and an electronic version of the loan documents.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to borrow from CFC up to \$15,000,000 to repay a portion of the RUS A Note under the Advantage Program as identified in the application. The loan maturity date and interest rate shall be in accordance with the CFC Advantage program as described in Big Rivers' application.

2. Big Rivers shall execute the CFC loan documents as authorized herein.

3. The Eighth Supplemental Indenture and RUS 2017 Loan Contract shall be approved as described in Big Rivers' application.

4. Big Rivers shall comply with all matters set out in finding paragraphs 3 through 8 as if they were individually so ordered.

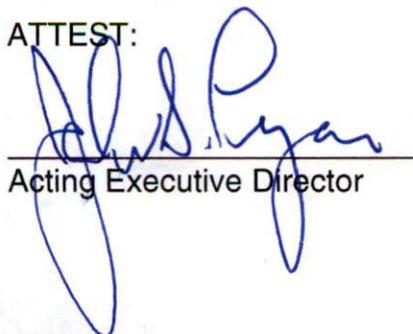
5. Any documents filed in the future pursuant to finding paragraphs 3, 4, 7, and 8 shall reference this case number and shall be retained in the utility's general correspondence file.

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

By the Commission

ENTERED
SEP 18 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Acting Executive Director

Case No. 2017-00281

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