



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 14, 2009

PARTIES OF RECORD

Re: Case No. 2007-00455

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact Rick Bertelson at 502/564-3940, Extension 260.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: Rick Bertelson, Staff Attorney

DATE: April 14, 2009

SUBJECT: Case No. 2007-00455
Big Rivers Electric Corporation, et al.

Pursuant to the Commission Staff's notice dated April 2, 2009, an informal conference ("IC") was held on April 8, 2009 at the Commission's offices in Frankfort, Kentucky. As listed in the Staff notice, the purpose of the conference was to discuss credit ratings, the demonstrated net output of the generating plants, and any other issues related to the case. A list of the attendees is attached hereto. Prior to the conference, Big Rivers Electric Corporation ("Big Rivers") sent Commission Staff a proposed agenda, a copy of which is also attached hereto.

At the beginning of the IC, Big Rivers provided Commission Staff and the attendees an update on the status of Big Rivers' pursuit of investment grade ratings from at least two ratings agencies. Moody's Investors Service ("Moody's") gave Big Rivers an investment grade rating of Baa1 on March 13, 2009. However, Standard and Poors ("S&P") has not formally issued an investment grade rating yet. On March 30, 2009, Big Rivers presented additional analyses to S&P, which the rating agency is still evaluating. Meanwhile, on March 31, 2009, Big Rivers made a presentation to Fitch Ratings ("Fitch"), seeking an investment grade rating from that rating agency.

Big Rivers stated that it would likely be the end of April 2009 before Fitch could issue its rating. Obtaining an investment grade rating from two agencies is a precondition of the Rural Utilities Service's ("RUS") agreement to allow Big Rivers to issue an indenture to replace its mortgage at the close of the Unwind Transaction. Big Rivers further stated that without the ability to replace its mortgage with an indenture, it has no incentive to go through with the Unwind Transaction as currently structured.

The Joint Applicants agreed to provide the Commission with updates on the progress of Big Rivers' pursuit of an investment grade rating from S&P and Fitch. The updates will be included in the Joint Applicants' upcoming status reports, the first of which is to be filed April 20, 2009, with subsequent reports filed every 15 days thereafter until closing. The Joint Applicants also agreed to file with the Commission, by April 16, 2009, a written statement that they will not close the Unwind Transaction until 5 days

after they have notified the Commission in writing that Big Rivers' debt has received a second investment grade rating issued by either S&P or Fitch.

Big Rivers next discussed the capacity tests which had been performed on its generating plants. All of the tests, except one, were conducted last year and demonstrated that each plant is capable of producing net generating output equal to or in excess of its required capabilities.

E.ON and Big Rivers then explained the status of negotiations with Henderson Municipal Power and Light ("HMPL") regarding HMPL's consent to the Unwind Transaction. It is the Joint Applicants' understanding that HMPL has presented the proposed settlement and second amendatory agreement to HMPL's Board of Directors and the Henderson City Commission and that they have granted their approval to both documents. HMPL has rejected an offer to increase the rate paid by Big Rivers for excess power from \$1.50 per MWh under their 1998 contract to \$2.50 per MWh. Instead, the rate will remain at the \$1.50-per-MWh level, and HMPL is reserving the right to litigate the interpretation of the 1998 contract.

In the event such litigation should take place, E.ON has agreed to indemnify Big Rivers through December 31, 2023. E.ON distributed a redacted version of a summary description of the proposed indemnification, a copy of which is attached hereto. E.ON opined that, as the terms of the amended HMPL agreement require no additional consideration from Big Rivers, the filing of the amended agreement does not trigger the requirement for Commission approval pursuant to Commitment No. 5 in Appendix A of the March 6, 2009 Order. Staff indicated that E.ON may be reading that commitment too narrowly and suggested that E.ON file its written interpretation when the amended HMPL agreement is filed with the Commission..

Representatives of the Southwire Company ("Southwire"), which is not a party to the case, were present pursuant to an agreement among the parties not to object to Southwire's participation in the IC. Southwire provided a brief review of the issues relating to the receipt of electric service that it has been negotiating with Big Rivers related to the Unwind Transaction. In the past, Southwire owned both its Hawesville rod and cable mill and the aluminum smelting facility which is now owned and operated by Century Aluminum of Kentucky General Partnership ("Century"). Century currently has a contract to supply Southwire with molten aluminum for its manufacturing process. Century and Southwire are negotiating to extend that business arrangement, but it is unknown if they will be successful. Southwire is concerned that, absent a contract extension, it may have to install aluminum melting furnaces, which would cost several million dollars, and that this could lead to the closure of its Hawesville plant. These issues are causing Southwire to give very careful scrutiny to its approval of the Unwind Transaction. Century's representatives stated that they are attempting to work with

Southwire to remove any economic disincentives for Southwire's approval of the Unwind Transaction.

Southwire's representatives stated that when Southwire sold the smelter to Century, it maintained the same service delivery point with Century. It currently takes service from that delivery point and pays its electricity bill through Century. Commission Staff indicated that arrangement may be contrary to the Commission's regulations and noted that if the companies are unable to timely negotiate a resolution to the issues regarding Southwire's retail power contract, the Commission may need to further examine that service arrangement.

Finally, Big Rivers and E.ON provided updates on a number of administrative amendments that they will file after the Unwind Transaction closes, including Big Rivers' amended tariff and the amended smelter agreements. Big Rivers also stated that there are schedules in the Transaction Termination Agreement regarding NO_x and SO₂ allowances and non-incremental capital expenditures that must be refiled to reflect post-April 2009 numbers. The most recently filed schedules assumed a closing date of no later than April 2009 and, therefore, must be updated to include numbers for subsequent months.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CASE NO. 2007-00455

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

SIGN IN

April 8, 2009

PERSON	REPRESENTING
RICHARD RAFF	PSC - LEGAL
Rich Bertison	PSC - Legal
Scott Lawless	PSC - F/A
Quang D. Nguyen	PSC
Daryl Newberry	PSC - F/A
Clayton Chaffin	PSC / Legal
JEFF JOHNSON	PSC
PAUL THOMPSON	E.ON US
Kendall R. Papp	SKO for E.ON US
Janis Miller	Smsm/ BREC

PERSON

DAVID P. BROWN

Allan Eyrue

Henry Payne

Mike Kurtz

Mark Bailey

David Spainhoward

Frank N. King, Jr.

BURNS MERCER

Jack Nyker

Chuck Brechel

Bob BERRY

REPRESENTING

Alcan/Century

Rio Tinto ALCAN

Century Aluminum

Alcan/Century - KIO C

Big Rivers

" "

BREC members

Meade Co. R.E.C.C.

NMPL

Big River/WEC

Western Ky Energy

PERSON

JOE WILLIAMSON

Jeff Herrin

John C. Stephens

Bill Blackburn

David Sanford

Allyson Sturgeon

Paul Adams

Lonnie Bellar

David Sinclair

Dan Arbaugh

RALPH BOWLING

REPRESENTING

Southwire Company

Southwire Co

Southwire Co.

Big Rivers Electric

PSC

E.ON

AG

E.ON

E.ON

E.ON

E.ON

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS)	
ELECTRIC CORPORATION FOR:)	
(I) APPROVAL OF WHOLESALE TARIFF)	
ADDITIONS FOR BIG RIVERS ELECTRIC)	CASE NO. 2007-00455
CORPORATION, (II) APPROVAL OF)	
TRANSACTIONS, (III) APPROVAL TO ISSUE)	
EVIDENCES OF INDEBTEDNESS, AND)	
(IV) 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)	

Agenda for April 8, 2009 Informal Conference

1. Status of Investment Grade Credit Ratings
2. Capacity Tests
3. HMPL
 - a. Consent
 - b. Amendments
 - c. Indemnification
 - d. G&A and NERC/SERC Certification
4. Southwire Company
5. Other Business Items
 - a. Administrative amendments
 - b. Ongoing due diligence

Summary Description of Proposed Indemnity in favor of Big Rivers

1. E.ON U.S. would indemnify Big Rivers against certain financial consequences of an interpretation of the Excess Henderson Energy provisions of the Station Two Power Sales Contract, adopted by a court, arbitrator or the KPSC prior to December 31, 2023, that is contrary to Big Rivers' and E.ON's understanding of the intended meaning and scope of those provisions (despite the fact that both parties believe there is little or no risk that a suit, arbitration or other action by HMPL asserting such a contrary interpretation would be successful).

2. The scope of the indemnity would be limited to financial consequences associated with Excess Henderson Energy that is generated between the unwind closing date and December 31, 2023 (or the date of an earlier termination of the Power Sales Contract).

3. In the event and to the extent that Big Rivers makes payments or delivers Excess Henderson Energy prior to the court, arbitration or KPSC decision described above, E.ON would protect Big Rivers from 75% of certain financial consequences of that performance, pending the issuance of the court, arbitration or KPSC decision described above. However, once Big Rivers' 25% share reached \$_____, E.ON would be responsible for 100% of those financial consequences thereafter. If a court, arbitrator or the KPSC thereafter adopts the contrary interpretation described in Paragraph 1 above, E.ON would also indemnify Big Rivers against that initial \$_____ outlay.

4. The financial consequences that would be the subject to the indemnity would exclude the costs that would have been incurred by Big Rivers to acquire the Excess Henderson Energy had Big Rivers and HMP&L executed at the unwind closing the amendment to the Power Sales Contract that was previously proposed by Big Rivers (and approved by the KPSC) but rejected by HMP&L (generally, \$2.50 per Mwh plus the costs for fuel, reagent, allowances, carbon taxes (if enacted) and sludge disposal).

5. The indemnity, payment and reimbursement obligations described above would be subject to an aggregate maximum cap of \$_____.

6. The indemnity commitment could not be expanded by amendments or modifications to the Power Sales Contract following the unwind closing, and any increases in HMP&L's capacity share from Station Two (which would correspondingly increase the pool of potential Excess Henderson Energy) would be limited to increases permitted by the existing contract.

7. Big Rivers would commit to initiate a declaratory judgment action or other action, suit or proceeding to resolve any dispute with HMP&L over the parties' rights and obligations under the Excess Henderson Energy provisions, if requested by WKE. WKE would have the right to control that action, as well as the defense of any similar action, suit or proceeding initiated by HMP&L or any other party. WKE would reimburse Big Rivers for 75% of its litigation costs, up to \$_____.

8. The indemnity would contain standard exclusive remedies language and disclaimers of incidental and consequential damages.