COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NOLIN RURAL ELECTRIC COOPERATIVE CORPORATION FOR AN ORDER PURSUANT TO KRS 278.300 AND 807 KAR 5:001, SECTION 11 AND RELATED SECTIONS AUTHORIZING THE COOPERATIVE TO OBTAIN A LINE OF CREDIT LOAN IN THE AMOUNT OF $13,000,000.00 FROM THE NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION	)	CASE NO. 99-252

O R D E R

Nolin Rural Electric Cooperative Corporation (Nolin) filed its application on July 15, 1999 for approval to issue indebtedness to the National Rural Utilities Cooperative Finance Corporation (CFC) and to execute a note in the amount of $13,000,000 according to CFC s PowerVision^{TM} financing program. Nolin stated in its application that the proceeds of this loan will be used to reimburse general funds for operating expenditures and construction costs until long-term loan funds become available.[1]

Nolin filed a copy of the correspondence from CFC approving the PowerVision^{TM} loan, which was dated May 4, 1999. Nolin submitted its application to the Commission for approval of the financing on June 14, 1999. The application did not initially satisfy the minimum filing requirements, but the initial filing deficiencies were cured and the application was considered filed on July 15, 1999.

[1] Application, at 3.

The PowerVision™ financing is a shelf loan agreement and promissory note, whereby Nolin has up to five years to withdraw any funds which will then be payable at terms up to 35 years from the date of the advance. Each advance will bear interest at CFC s standard fixed rate or variable rate at the time of advance, depending on Nolin s selection at that time. PowerVision™ financing is available only to qualifying rural electric cooperative corporations that are concurrent borrowers with CFC and the Rural Utilities Service (RUS).

In conjunction with Case No. 98-588,[2] an informal conference was held at the Commission s offices on August 24, 1999, with CFC representatives and other interested parties.[3] The conference provided CFC s representatives an opportunity to explain this new financing alternative, PowerVision™, and answer questions of Commission Staff and others in attendance.

The primary difference between CFC s new PowerVision™ financing program, and conventional CFC, or conventional RUS and CFC concurrent financing programs, is that PowerVision™ is a shelf loan, not referenced to a previously approved work plan. Under conventional financing programs, Nolin would establish a construction work plan for a specified period, usually two or three years, then obtain Commission approval for the work plan and the related financing. According to the PowerVision™ financing program, the only description of assets that may be acquired or constructed is that they

[2] Case No. 98-588, The Application of Big Sandy Rural Electric Cooperative Corporation for Authority to Issue Indebtedness.

[3] While Nolin references this informal conference in its response to the Commission s July 29, 1999 Order, representatives of Nolin were not in attendance.

are eligible property additions.[4] Eligible property additions are defined as the cooperative s utility system. The electric system is defined as property used for electric production, transmission, distribution, conservation, load management, general plant and other related facilities that are acceptable to RUS.[5] PowerVision™ withdrawals may not be used to finance operating costs.[6] Although this is the same as for conventional financing, no construction work plan has to be formalized and approved in connection with the financing. The PowerVision™ credit facility does not preclude Nolin from obtaining conventional RUS and CFC financing.

Although PowerVision™ is a shelf loan, it is not a line of credit. Generally, a CFC line of credit is unsecured, has a one-year term limitation and bears interest according to CFC short-term, line of credit rate schedules. A line of credit withdrawal may be made, repaid, then withdrawn again. This differs from PowerVision™ in that when a PowerVision™ withdrawal is made, a note and amortization period is established for that withdrawal and the shelf loan amount is reduced by the withdrawal. In addition, penalties are imposed if PowerVision™ funds are repaid early.

The sample PowerVision™ loan agreement filed in response to the Commission s July 29, 1999 Order includes the same requirements as the RUS

[4] See Response to the Commission s July 29, 1999 Order, Exhibit C, page 27 of 28, Schedule 1, Item 1. This schedule to the loan agreement states that eligible property additions is defined in 7 CFR, Part 1718, Subpart B, Mortgage for Distribution Borrowers.

[5] See Response to the Commission s July 29, 1999 Order, Exhibit 8, page 7 of 49, the "Restated Mortgage and Security Agreement between Nolin, RUS, and CFC, dated as of May 1, 1997.

[6] Id., at pages 11 and 12 of 49.

mortgage agreement for issuing notes to other lenders. The loan agreement also permits a lien accommodation without the prior consent of RUS or CFC if certain financial criteria are met.[7] One of the criteria is that a Times Interest Earned Ratio (TIER) of not less than 1.5X and a Debt Service Coverage of 1.25X, must be achieved for the two calendar years immediately preceding the issuance of such additional notes. Other criteria include requirements that the ratio of Net Utility Plant to Total Long-Term Debt cannot be less than 1.0; Equity must be greater than or equal to 27 percent of Total Assets on a pro forma basis; and the additional notes when added to all outstanding principal for loans not related to the electric system cannot exceed 30 percent of total Equity on a pro forma basis.

Once the PowerVision™ financing is approved by CFC, the borrower must meet the financial criteria on an ongoing basis to be eligible to withdraw funds under the program. Based on Nolin s financial condition at the time of its application, it appears that Nolin satisfies all the PowerVision™ financing criteria. However, if the requisite financial criteria are not met at the time Nolin requests a withdrawal, a waiver can be requested.

Nolin has stated in its responses to the Commission s July 29, 1999 Order that it views the PowerVision™ financing as a bridge loan, which would be paid off once long-term financing from RUS had been approved.[8] This interpretation of the PowerVision™ financing program is not consistent with the documents filed by Nolin or

[7] Id., at pages 15 and 16 of 49.

[8] See Response to the Commission s July 29, 1999 Order, Items 1(f), 2(a), and 6(a).

the information provided by CFC at the August 24, 1999 informal conference in Case No. 98-588. Nolin was not present at that informal conference but the information provided by CFC indicates that the PowerVision™ loan may be used as a substitute for the RUS/CFC concurrent loan. If PowerVision™ loan funds are withdrawn to replace RUS or CFC loan funds, those loan funds are no longer available to Nolin. The evidence in this record will not support finding that a PowerVision™ loan advance is a bridge loan or that the proceeds may be used to reimburse general funds for operating expenditures. However, Nolin s misunderstanding on these points is not a reason to deny it the opportunity to benefit from the perceived advantages of the PowerVision™ program.

Based on the evidence of record and being sufficiently advised, the Commission finds that the concept of shelf financing is reasonable, and financings of this nature have been approved for other utilities. However, in all prior instances of shelf financing, the specific uses of the proceeds were known at the time the financing was approved. This is not true for PowerVision™. Here, the specific uses will not be known until Nolin files a withdrawal request with CFC.

The potential exists, under the provisions of the restated mortgage and security agreement, that Nolin could use a portion of the proceeds to fund non-electric system assets such as natural gas, telecommunications, and water/wastewater projects. While these may be acceptable functions of the cooperative, the Commission must consider whether the investment will adversely affect the financial condition of the utility in approving long-term financing. Thus, there is a need to monitor the actual purposes and uses of the loan funds. Consequently, Nolin should provide certain information related to the request to withdraw funds.

At the time of requesting a withdrawal, Nolin must meet the previously discussed RUS mortgage requirements to permit CFC a lien accommodation. The process of requesting a withdrawal under PowerVision™ requires two supporting documents: (1) an independent auditor s certificate attesting that Nolin complies with the financial covenants of the mortgage; and (2) a complete PowerVision™ Requisition Form with an attestation from Nolin s manager that it is in compliance with the loan agreement and that the funds will be used for eligible property additions. These documents must be filed with both CFC and RUS.

In addition to the auditor s certificate and the PowerVision™ requisition form, CFC s analysts are provided detailed explanations of the property or construction to be financed with each PowerVision™ loan withdrawal. Any questions CFC has about the property or construction qualifying as eligible property additions are communicated to RUS for its approval. CFC has indicated that PowerVision™ withdrawals will be used primarily to fund the CFC portion of concurrent RUS and CFC financing programs. In these instances the Commission will already have approved the work plan, and the benefits of using PowerVision™ funding will result from reduced administrative burden and the ability to obtain these withdrawals prior to receipt of RUS funding. This may decrease the need to borrow higher cost short-term debt for interim financing pending the availability of RUS funds.

The Commission s concern is in instances when withdrawals are not referenced to an approved work plan. The reduced level of oversight into the purpose and use of the financing in these circumstances necessitates the Commission to require a cooperative to explain why any particular construction project did not require a Certificate of Public Convenience and Necessity, and describe the property being constructed or replaced with the loan funds.

In summary, the Commission finds that:

1. The proposed PowerVision™ loan from CFC, if limited to financing of the cooperative s electric system assets, is for lawful objects within the corporate purposes of Nolin, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

2. Nolin is capable of executing its notes as security for the loan as stated herein.

3. Within 10 days of the receipt of finalized PowerVision™ loan documents, Nolin should file a copy of said documents with the Commission for the case record.

4. In the event that Nolin does not meet the requisite financial criteria at the time it requests a withdrawal and a waiver is requested, Nolin shall notify the Commission within 10 days of its obtaining RUS and other noteholders prior consents.

5. Nolin should file with the Commission a copy of the same documents to be submitted to CFC and RUS for a withdrawal of PowerVision™ funds. In addition, Nolin should include a statement to cross-reference all construction funded by the PowerVision™ withdrawals to the Commission case approving the work plan(s). If the financing is not related to a work plan, Nolin should describe the property being constructed or replaced, and explain why the property did not require a Certificate of

Public Convenience and Necessity. Nolin should not withdraw any PowerVision™ funds until at least 10 days after filing the loan withdrawal documents. If the Commission does not issue an Order questioning the purpose or use of the proceeds with that 10-day period, the withdrawal will be deemed approved.

6. At the time discussion is initiated with CFC regarding loan withdrawals, Nolin should inform the Commission s Financial Analysis Division of the plans regarding the Cooperative s intended loan fund withdrawals.

7. Nolin should select the interest rate program that will result in the net lowest cost of money to it over the term of the financing, bearing either a fixed or variable rate, as chosen by Nolin at the time each advance is drawn from CFC, subject to the provisions and terms of the loan agreement with respect to the renegotiations of the interest rate.

8. Upon receipt of the PowerVision™ withdrawal, Nolin should include in its next monthly report filed with the Commission, the amount and date of the withdrawal, the interest rate program selected, and the remaining amount of the PowerVision™ credit facility.

9. The proceeds from the proposed loans should be used only for the lawful purposes set out in Nolin s application and the documents supporting the specific fund withdrawals.

IT IS THEREFORE ORDERED that:

1. Nolin is authorized to issue indebtedness to CFC in the amount of $13,000,000 for a shelf loan according to its PowerVision™ financing program, bearing either a fixed or variable interest rate, as chosen by Nolin at the time each advance is

drawn from CFC, subject to the provisions and terms of the loan agreement with respect to the renegotiation of the interest rate.

2. Nolin is authorized to execute its notes as security for the loan herein authorized.

3. Nolin shall comply will all matters set out in Findings No. 3 through 9 as if they were individually so ordered.

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.

Done at Frankfort, Kentucky, this 16th day of November, 1999.

By the Commission

ATTEST:

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Executive Director