

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)	
APPLICATION FOR APPROVAL TO AMEND TO)	CASE NO.
EVIDENCES OF INDEBTEDNESS)	2000-486

O R D E R

On November 1, 2000, Big Rivers Electric Corporation ("Big Rivers") filed an application seeking approval of amendments to two agreements previously approved by the Commission. Big Rivers seeks approval of amendments to the Restated Mortgage and Security Agreement dated July 15, 1998 ("1998 Mortgage"), as amended by the Supplemental Mortal Mortgage and Security Agreement dated April 1, 2000 ("2000 Supplemental Mortgage"), and the Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement dated April 1, 2000 ("Nondisturbance Agreement"). These amendments are the result of efforts by Big Rivers to reduce its annual financing costs by \$220,500 through a "Fee Reduction Event" as provided for in the Standby Bond Purchase Agreements ("Standby Agreements"), which was the subject of Case No. 2000-343.¹ Big Rivers also requests that the Commission incorporate by reference the record from Case No. 2000-343 into the record of this proceeding.

¹ Case No. 2000-343, Big Rivers Electric Corporation's Application for Approval of Amendments to Standby Bond Purchase Agreements, final Order dated August 25, 2000.

The Standby Agreements were included as part of the financing documents relating to the lease transaction between Big Rivers and subsidiaries of LG&E Energy Corp., which implemented Big Rivers' plan of reorganization under Chapter 11 of the United States Bankruptcy Code. Specifically, Big Rivers entered into two Standby Agreements with Credit Suisse First Boston ("Credit Suisse") to provide liquidity support for two pollution control bond ("PC bond") issues sold by the County of Ohio, Kentucky.² The Standby Agreements require Big Rivers to pay Credit Suisse an annual commitment fee of 40 basis points per annum, or approximately \$588,000. Under amendments approved by the Commission in Case No. 2000-343, if a "Fee Reduction Event" takes place before December 31, 2000, the commitment fee after that date will be reset to 25 basis points per annum, or approximately \$367,500. Thus, if successful, Big Rivers has estimated it would save approximately \$220,500 annually in commitment fees associated with the Standby Agreements.

A "Fee Reduction Event," as defined in the Standby Agreements, includes any of the following options:

- 1) Big Rivers causing the 1998 Mortgage to be amended to provide that all of Big Rivers' payment obligations to Credit Suisse be secured under the 1998 Mortgage on a parity with amounts owed by Big Rivers to AMBAC Assurance Corporation ("AMBAC");

² The PC bonds financed pollution control facilities at Big Rivers' D. B. Wilson Generating Station. At the date of Big Rivers' bankruptcy, the PC bond issues were identified as the \$58.8 million Pollution Control Floating Rate Demand Bonds, Series 1983 ("1983 Series Bonds") and the \$83.3 million Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 ("1985 Series Bonds").

- 2) Big Rivers obtaining a shadow rating on its bonds, absent AMBAC insurance, of investment grade or higher; or
- 3) Big Rivers amending the bond documents to provide that if the Standby Agreements terminate on the fifth anniversary of July 17, 1998, any bonds held by Credit Suisse on the termination date will be subject to special mandatory redemption over the succeeding five year period in ten equal semi-annual installments, with such special mandatory redemption payments guaranteed by AMBAC under the bond insurance policy.³

Big Rivers' current application reflects its attempt to achieve option No. 1. Big Rivers has filed the proposed changes to its 1998 Mortgage⁴ and the Nondisturbance Agreement reflecting revisions necessary to secure its obligations to Credit Suisse on a parity with AMBAC. While the draft versions are still subject to comment by the parties to the documents, Big Rivers intends to file a revision of the amended 1998 Mortgage and amended Nondisturbance Agreement showing the comments of all parties as soon as they are available. Big Rivers does not expect substantial changes in the forms of these documents.

Based on the record and being otherwise advised, the Commission finds that the amendments to the 1998 Mortgage and Nondisturbance Agreement, as presented in

³ Application at 5.

⁴ The changes shown in the 1998 Mortgage submitted with Big Rivers' application also incorporate changes made by the 2000 Supplemental Mortgage. Those changes were approved by the Commission in Case No. 99-450, Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units, final Orders dated November 24, 1999 and January 28, 2000.

the application, are reasonable and should be approved. The achievement of a “Fee Reduction Event” will allow Big Rivers the opportunity to reduce its costs and this will ultimately benefit its member cooperatives and their ratepayers. The expected annual commitment fee savings will provide an on-going benefit to these ratepayers, as the PC bonds are not due to mature for at least another 13 years.⁵

The Commission’s approval of these amendments is based upon the substance of the documents as filed with Big Rivers’ application. Should these documents be modified, Big Rivers will have to file the changes with the Commission for review and possible modification of this Order. Therefore, in the event the 1998 Mortgage and the Nondisturbance Agreement are further modified by the parties, Big Rivers should provide the Commission with the revised form of the documents, with each revision clearly referenced and explained. Any further revisions should be provided to the Commission in a timely manner, reflecting changes agreed to by all the parties.

Big Rivers also requested the Commission to find that any filing requirements under 807 KAR 5:001, Section 11, that have not been satisfied are either not applicable under the circumstances of this case or, in the alternative, should be waived by a deviation under 807 KAR 5:001, Section 14.⁶ Since this application only deals with amendments to existing evidences of indebtedness that were recently approved, the Commission finds it reasonable to grant Big Rivers’ request to deviate from the filing requirements of 807 KAR 5:001, Section 11.

⁵ The 1983 Series Bonds are due to mature on June 1, 2013, while the 1985 Series Bonds are due to mature on October 1, 2015.

⁶ Specifically, Big Rivers did not provide the original cost of its property or a financial exhibit.

IT IS THEREFORE ORDERED that:

1. The amendments to the 1998 Mortgage and Nondisturbance Agreement, as filed with and described in the application, are approved.
2. Within 7 days of receipt of the last approval by the parties to the 1998 Mortgage and Nondisturbance Agreement, Big Rivers shall notify the Commission in writing that all requisite approvals have been obtained.
3. In the event that any revisions are made to the amendments approved herein, Big Rivers shall file the revised amendments within 7 days of obtaining concurrence by all parties and shall reference each revision and include an explanation for each.
4. The request of Big Rivers to deviate from the filing requirements of 807 KAR 5:001, Section 11, is granted.
5. Big Rivers' motion to incorporate by reference the case record of Case No. 2000-343 into this record is granted.

Done at Frankfort, Kentucky, this 28th day of November, 2000.

By the Commission

ATTEST:


Executive Director