

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION, LG&E ENERGY)	
MARKETING, INC., WESTERN KENTUCKY)	
ENERGY CORPORATION, WKE STATION)	CASE NO. 2002-00195
TWO INC., AND WKE CORPORATION FOR)	
APPROVAL OF AMENDMENTS TO)	
TRANSACTION DOCUMENTS)	

O R D E R

On July 12, 2002, the Commission approved certain amendments to the lease of generating facilities by Big Rivers Electric Corporation (Big Rivers) to the LG&E Parties.¹ The amendments, set forth in an application filed on June 10, 2002, related to the decision by WKEC to construct, install, operate, and maintain, at the Coleman Generating Station, a flue-gas desulfurization system (Coleman scrubber). The amendments impacted three documents included in the lease transaction: (1) the Fifth Amendment to New Participation Agreement and Second Amendment to Lease and Operating Agreement (Fifth Amendment); (2) the First Amendment to Mortgage and Security Agreement (LEM Mortgage) (LEM Mortgage Amendment); and (3) the First Amendment to Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement (Nondisturbance Agreement Amendment). At

¹ The LG&E Parties are wholly owned subsidiaries of LG&E Energy Corp. The subsidiaries that are co-applicants with Big Rivers are LG&E Energy Marketing, Inc. (LEM), Western Kentucky Energy Corporation (WKEC), WKE Station Two, Inc., and WKE Corp.

the time the Commission issued its approval of the amendments, a majority of the parties to the Nondisturbance Agreement had not yet approved them. Consequently, the Commission's approval was conditioned upon Big Rivers filing any further revisions agreed to by the parties within 7 days of such agreement. Big Rivers was directed to reference in its filing each revision and include an explanation for each revision.

In addition, as of the date of the Commission's July 12, 2002 Order, Big Rivers had not determined what accounting entries, if any, would be made to its books to reflect the Coleman scrubber. Big Rivers was directed to file a discussion of the proposed accounting treatment within 10 days of its finalization, but prior to booking any accounting entries. The discussion was to include any proposed accounting entries, the evaluations and conclusions of its auditor, its tax counsel, and the Rural Utilities Service (RUS), and the rationale supporting the accounting approach proposed.

On September 3, 2002, Big Rivers submitted a compliance filing containing the final versions of the Fifth Amendment, the LEM Mortgage Amendment, and the Nondisturbance Agreement Amendment. Each of the final versions filed was black-lined to identify all changes and revisions, and an explanation for each revision was included. Big Rivers stated that the changes and revisions were made at the request of RUS, and reflected technical changes, conforming changes, or corrections to the documents. Big Rivers also filed a discussion of the accounting treatment that had been determined for the Coleman scrubber.² Big Rivers requested that the filing be

² Big Rivers subsequently filed on September 26, 2002 supplemental information on its accounting treatment for the Coleman scrubber.

accepted as being in compliance with the July 12, 2002 Order and that the Commission unconditionally approve the amendments.

Based on a review of the September 3, 2002 filing and the September 26, 2002 supplemental filing, the Commission finds that Big Rivers has complied with the requirements of the July 12, 2002 Order, and the filings are accepted. Based on a review of the record, the Commission further finds that the final versions of the amendments filed on September 3, 2002 are reasonable. The changes and revisions do not appear to have altered the terms and conditions documented in the amendments as originally filed, but consist of technical changes and corrections. Therefore, the Commission approves the amendments set forth in the September 3, 2002 filing.

With respect to the accounting entries, Big Rivers states that a series of discussions with its external auditor and the RUS were held to decide the accounting treatment for the Coleman scrubber. RUS argued, and Big Rivers and its external auditor subsequently agreed, that the Coleman scrubber is a contribution to Big Rivers by WKEC which should not be reflected by Big Rivers on the face of its financial statements, but appropriately disclosed in the accompanying footnotes. Big Rivers will account for the Coleman scrubber in its continuing property records, but will utilize contra accounts to avoid reflecting the Coleman scrubber on the financial statements. Under this accounting treatment, no depreciation expense will be attributed to the Coleman scrubber on Big Rivers financial statements. However, WKEC has 100 percent responsibility for ad valorem property taxes associated with the Coleman scrubber. For ad valorem property tax purposes only, Big Rivers will depreciate the Coleman scrubber, along with any improvements, on a straight-line basis from the in-

service date through the end of the lease term, December 31, 2023. Big Rivers noted that no correspondence has been received from either its external auditor or the RUS regarding the final resolution of the accounting treatment for the Coleman scrubber.³

The Commission finds the accounting treatment proposed for the Coleman scrubber to be reasonable, and it should, therefore, be accepted. However, the Commission is concerned that Big Rivers has not received written confirmation of this accounting treatment from RUS, even though RUS advocated it. The lack of documentation from RUS could leave Big Rivers vulnerable to different interpretations in the future. In order to minimize this risk, Big Rivers should submit a written statement to RUS outlining the agreed accounting treatment for the Coleman scrubber and request a written response from RUS. Big Rivers should file copies of its statement to RUS and any response thereto within 10 days of sending or receipt.

IT IS THEREFORE ORDERED that:

1. The September 3, 2002 filing by Big Rivers complies with the requirements contained in ordering paragraphs 3 and 4 of the Commission's July 12, 2002 Order in this proceeding and is accepted.

2. The final version of the amendments to the lease transaction between Big Rivers and the LG&E Parties, as described in the Fifth Amendment, the LEM Mortgage Amendment, and the Nondisturbance Agreement Amendment, are approved, and Big Rivers is authorized to execute those amendments as described in the September 3, 2002 filing.

³ September 26, 2002 Supplement to the September 3, 2002 Compliance Filing, pages 1 and 2 of 4.

3. The accounting treatment for the Coleman scrubber described in the September 26, 2002 supplemental response is approved.

4. Big Rivers shall file with the Commission three copies of any correspondence with RUS relating to accounting treatment for the Coleman scrubber, as described in this Order, within 10 days of sending or receipt.

Done at Frankfort, Kentucky, this 30th day of October, 2002.

By the Commission

ATTEST:



Executive Director