

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION S)
APPLICATION FOR APPROVAL TO) CASE NO. 2003-00240
AMEND EVIDENCES OF INDEBTEDNESS)

O R D E R

Big Rivers Electric Corporation (Big Rivers) filed a letter, which the Commission will treat as an application, requesting affirmation that neither its 10-year renewal of a revolving credit facility with the National Rural Utilities Cooperative Finance Corporation (CFC) nor the financing documents necessary to effectuate that renewal require Commission approval. Big Rivers states that its existing 5-year revolving credit facility with CFC was entered into in July 1998 as part of the transaction to implement its bankruptcy plan of reorganization, and that the Commission's July 14, 1998 Order in Case No. 1998-00267¹ found that the revolving credit facility was exempt from Commission approval under KRS 278.300(8).

Under the terms of Big Rivers proposed 10-year revolving credit facility, CFC will provide Big Rivers a maximum aggregate principal amount outstanding of \$15 million. Big Rivers will be required to annually reduce to zero for at least five consecutive business days all amounts outstanding under the revolving credit facility. The first

¹ Case No. 1998-00267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson (final Order dated July 14, 1998).

reduction to zero is due within 360 days of CFC's first advance, and similar reductions are required in each 12-month period that the revolving credit agreement is in effect. Thus, any loan under the revolving credit facility cannot be renewed from year to year but must be retired within 365 days, and no new loan can be issued for at least five consecutive business days thereafter.

Big Rivers also filed the following five financing documents that need to be executed in connection with the renewed credit facility:

- Exhibit 1: First Amendment to Third Restated Mortgage and Security Agreement;
- Exhibit 2: Second Amendment to Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement;
- Exhibit 3: First Amended and Restated Revolving Credit Agreement;
- Exhibit 4: First Amended and Restated Secured Promissory Note; and
- Exhibit 5: First Amended and Restated and Restated Letter of Credit Application and Agreement.

Big Rivers also filed highlighted copies of the five exhibits showing the specific changes to each.

Based on a review of the application and being otherwise sufficiently advised, the Commission finds that the renewed credit facility requires all loans to CFC to be paid off every 12 months and prohibits the renewal or rolling-over of those loans. Consequently, the Commission finds that the renewed credit facility for a maximum aggregate amount outstanding of \$15 million qualifies for the exemption under KRS 278.300(8) and does not require Commission approval. However, the Commission finds that the five financing documents are not exempt. These documents were originally approved in Case No. 1998-00267, and do not qualify for any exemption under KRS Chapter 278.

Thus, any revisions must also be approved. Based on a review of the five revised financing documents, the Commission finds that the proposed changes are intended to properly reflect the renewed credit facility or other financing changes previously approved by the Commission. All the proposed changes appear to be reasonable and the five financing documents should be approved.

The Commission's approval of the financing documents is based upon the documents as filed by Big Rivers with the Commission on June 20, 2003. Any revisions to these documents should be promptly filed, clearly identified, and supported by a narrative explanation of each change so that the Commission can review the revisions expeditiously and, if necessary, modify this Order.

IT IS THEREFORE ORDERED that:

1. Big Rivers revised revolving credit facility with CFC in a maximum aggregate principal amount outstanding of \$15 million is exempt from Commission approval under KRS 278.300(8).

2. Big Rivers revised financing documents, enumerated in the findings above as Exhibits 1-5, are approved.

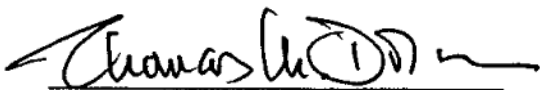
3. Within 7 days of receipt of the last approval by the parties to each of the five exhibits referenced above, Big Rivers shall notify the Commission in writing that all requisite approvals have been obtained for that exhibit.

4. In the event that any revisions are made to the financing documents as approved herein, Big Rivers shall file the revisions within 7 days of obtaining concurrence by all parties and shall reference each revision and include an explanation for each.

Done at Frankfort, Kentucky, this 24th day of June, 2003.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Charles H. [unclear]", written over a horizontal line.

Executive Director

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