

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	
CORPORATION FOR APPROVAL TO ISSUE)	CASE NO.
EVIDENCES OF INDEBTEDNESS)	2012-00492

ORDER

On November 14, 2012, Big Rivers Electric Corporation (“Big Rivers”) tendered its application seeking Commission approval to issue new evidences of indebtedness in connection with refunding by purchase of \$58.8 million in County of Ohio, Kentucky (“Ohio County”), Pollution Control Floating Rate Demand Bonds, Series 1983 (“1983 Bonds”) and the issuance by Ohio County of a like amount of Pollution Control Refunding Revenue Bonds, Series 2013A (“2013A Bonds”).¹ On January 24, 2013, Big Rivers filed a motion to amend and supplement its application, seeking, among other things, Commission approval to use all or a portion of the \$60 million in remaining proceeds from its financing with CoBank ACB (“CoBank”), which was authorized by the Commission in Case No. 2012-00119² and was designated for capital expenditures in the ordinary course of business, as an alternative option to purchase the 1983 Bonds upon their maturity. The amended and supplemental filing also sought Commission approval to use the “Transition Reserve” approved by the Commission in

¹ At the February 28, 2013 Hearing, Big Rivers’ witness Billie J. Richert testified that Big Rivers has withdrawn its request to issue the 2013A Bonds. See Video log at 11:36:53 a.m.

² Case No. 2012-00119, Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness (Ky. PSC May 25, 2012).

Case No. 2007-00455,³ in conjunction with the unwind transaction, to replace to the extent of \$35 million, the CoBank amounts that would otherwise have been used for capital expenditures in the ordinary course of business.

Big Rivers is an electric generation and transmission cooperative, organized under KRS Chapter 279, which owns electric generation and transmission facilities, and purchases, transmits and sells electricity at wholesale. It exists for the primary purpose of supplying the wholesale electricity requirements of its three distribution cooperative members, Kenergy Corp., Meade County Rural Electric Cooperative Corporation, and Jackson Purchase Energy Corporation (“Members”). Its Members provide retail electric service to approximately 112,000 retail members in 22 Western Kentucky counties.

Intervenors are the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention; Kentucky Industrial Utility Customers, Inc.; and Alcan Primary Products Corporation (“Alcan”). Two informal conferences were held during this case and Big Rivers responded to two rounds of data requests. A formal evidentiary hearing was held at the Commission offices on February 28, 2013. Big Rivers provided responses to requests for information made at the hearing on March 5 and 11, 2013. The record is now closed and the matter stands submitted for a decision.

BACKGROUND

Big Rivers financed pollution control facilities at its Wilson Generating Station in part with proceeds of the 1983 Bonds, which will mature on June 1, 2013. Big Rivers stated in its initial application that it would purchase the 1983 Bonds from their current

³ Case No. 2007-00455, 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 EON U.S. LLC, Western Kentucky Energy Corp, and LG&E Energy Marketing, Inc. for Approval of Transactions (Ky. PSC Mar. 6, 2009).

holder, Dexia Credit Local, in conjunction with issuing the 2013A Bonds. However, due to the uncertainties facing potential bond purchasers as a result of Century Aluminum's ("Century") notice to terminate its retail service agreement,⁴ Big Rivers' pending rate case, and the impacts of the pending rate case on Alcan's smelter operation in Sebree, Kentucky, Big Rivers opted to amend and supplement its application as previously described.

AMENDED PROPOSAL

CoBank Funds

In Case No. 2012-00119, we approved Big Rivers' request to use \$60 million of the proceeds of the secured loan with CoBank for capital expenditures in the ordinary course of business. Ordering paragraph 6 of the May 25, 2012 Order in that proceeding stated that "the proposed loans shall be used only for the lawful purposes set out in Big Rivers' Application." With that restriction on Big Rivers' use of the CoBank funds, it now seeks Commission approval to use those funds to pay its obligations under the 1983 Bonds.

In support of its amended request, Big Rivers points out that the 1983 Bonds are tax exempt. If it pays off the 1983 Bonds with funds that are not borrowed funds, it is Big Rivers' understanding that it would be unable to later refinance that debt with tax exempt bonds. While there is little difference at present in the interest rates on taxable debt and tax exempt debt, Big Rivers states that these circumstances could change in the future. Big Rivers states that while use of the CoBank borrowed funds does not

⁴ On January 31, 2013, Alcan provided Big Rivers with Notice of Termination of its Retail Electric Service Agreement with Kenergy Corp., the Big Rivers' member cooperative from which it takes service.

assure that it will have access to tax exempt debt in the future, such use holds open the opportunity to do so.

Transition Reserve

The Transition Reserve was established by Big Rivers in 2009 in connection with the unwind transaction and was addressed further in Case No. 2012-00119. Ordering paragraph 8 in the May 25, 2012 Order in that case directed that Big Rivers invest the \$35 million in the Transition Reserve “in an interest-bearing account to be used exclusively as an emergency fund to offset the loss of revenue should one or both Smelters close, unless authorized by the Commission to use the funds for another purpose.” Big Rivers now seeks authority to use the Transition Reserve funds for capital expenditures in the ordinary course of business to replace a portion of the CoBank funds, which it now seeks to use to pay the 1983 Bond obligations.

DISCUSSION OF ISSUES

As stated in its amended application, Big Rivers must purchase, refund or pay the 1983 Bonds on or before their June 1, 2013 maturity date or be considered in default on its obligations with respect to those bonds, which would result in default on its obligations with respect to all its indenture debt. If, due to the uncertainties cited previously, it is unable to issue new debt at reasonable terms, or is unable to issue new debt under any terms, Big Rivers is still required to purchase, refund or pay the 1983 Bonds.⁵ At the present time, Big Rivers has limited alternatives to its amended and supplemental financing proposal. One option would be to use internally generated

⁵ Subsequent to Alcan's provision of its Notice of Termination of its Retail Electric Service Agreement, Big Rivers' credit rating was lowered by each of the three major rating agencies, Standard and Poor's, Moody's Investor Service, and Fitch Ratings Ltd.

funds to pay the 1983 Bonds, but there are serious concerns about the impact of this option on its liquidity.⁶ It has commenced negotiations with CoBank and National Rural Utilities Cooperative Finance Corporation ("CFC") in an attempt to revise the terms of its revolving credit agreements with those lenders to permit access to the funds therein, which are now either unavailable from CoBank due to the termination notices of Century and Alcan or will become unavailable from CFC upon the termination of the Century or Alcan wholesale power contract. However, whether those negotiations are successful and when the funds might be available if the negotiations are successful, are both uncertain at a time when Big Rivers needs certainty. Removing the uncertainty regarding Big Rivers' ability to purchase the 1983 Bonds without impairing its liquidity is a step that we believe should be viewed favorably by Big Rivers' lenders, its auditor, the credit rating agencies which monitor both its financial and operational risks, and the 112,000 customers who rely on its generation and transmission facilities. Accordingly, we will grant the approval sought by Big Rivers in its amended application.

IT IS THEREFORE ORDERED that:

1. The May 25, 2012 Order in Case No. 2012-00119 is amended to provide that Big Rivers is authorized to pay its obligations under the 1983 Bonds by using \$60 million of the proceeds of the secured loan with CoBank, as requested in its amended application.

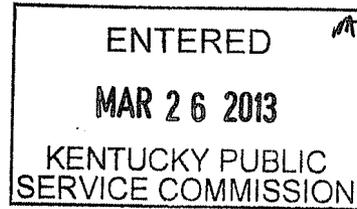
2. Big Rivers is authorized to use the Transition Reserve funds to replace up to \$35 million of the aforementioned CoBank funds and use them for capital

⁶ One concern is how Big Rivers will be viewed by its auditor, KPMG, and the extent to which the many uncertainties facing Big Rivers may impact KPMG's consideration of Big Rivers' ability to continue as a going concern as described in the American Institute of Certified Public Accountants' auditing standards.

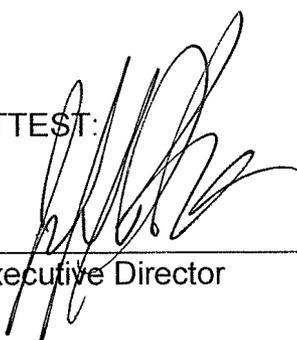
expenditures in the ordinary course of business, as requested in its amended application.

3. All other provisions of the Commission's May 25, 2012 Order in Case No. 2012-00119 shall remain in full force and effect.

By the Commission



ATTEST:



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