

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	)	2013-00125

ORDER

On March 28, 2013, Big Rivers Electric Corporation ("Big Rivers") submitted its application seeking Commission approval to amend and restate its existing \$50,000,000 revolving line of credit agreement dated July 16, 2009 ("2009 Revolver") with the National Rural Utilities Cooperative Finance Corporation ("CFC"). Big Rivers proposes to extend the term and amend sections that would otherwise cause the 2009 Revolver to be unavailable to Big Rivers after August 20, 2013. It also proposes to issue new evidences of indebtedness as necessary to implement the terms of the amendment to the 2009 Revolver.

Big Rivers entered into the 2009 Revolver with CFC in connection with the "unwind transaction" after it was approved by the Commission in Case No. 2007-00455<sup>1</sup> along with other agreements. Under Section 6.01M(iii) of the 2009 Revolver, an event of default is triggered if "[o]ne or more of [Big Rivers'] wholesale power contract (sic) with its distribution cooperative members which, individually or in the aggregate,

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<sup>1</sup> 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).

represent more than 10% of [Big Rivers'] total gross revenue shall for any reason be terminated."<sup>2</sup> In 2012, the Century smelter accounted for 36 percent of Big Rivers' total gross revenue. On August 20, 2012, Century Aluminum of Kentucky General Partnership ("Century") provided a formal one-year notice of termination of its electric service agreement with Kenergy. Century's notice to terminate its retail service with Kenergy would result in the termination of the wholesale contract related to that smelter retail service agreement. Century's termination of its electric service, effective August 20, 2013, will trigger an event of default as defined under the 2009 Revolver, which could result in CFC's not allowing Big Rivers to make advances and/or accelerating all unpaid principal and unpaid interest under any debt obligations that Big Rivers has with CFC.<sup>3</sup>

#### PROCEDURAL BACKGROUND

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, Jackson Purchase Energy Corporation, and Meade County Rural Electric Cooperative Corporation, (collectively "Members"). Those Members provide

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<sup>2</sup> Among other approvals in connection with the unwind transaction, the Commission also approved an Indenture between Big Rivers and U.S. Bank National Association as trustee ("Indenture"); a wholesale electric service agreement between Big Rivers and Kenergy Corp. ("Kenergy"), one of Big Rivers' distribution cooperative members; and the related retail electric service agreement between Kenergy and Century Aluminum of Kentucky General Partnership ("Century").

<sup>3</sup> The January 31, 2013 formal notice of termination by Alcan Primary Products Corporation ("Alcan") of its electric service agreement with Kenergy would also trigger a default on the 2009 Revolver by Big Rivers.

retail electric service to approximately 112,000 retail members in 22 Western Kentucky counties.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC") petitioned for and were granted intervention. A procedural schedule was established which provided for two rounds of data requests to Big Rivers, and opportunities for intervenors to file written comments and for Big Rivers to respond to any such comments. KIUC issued one data request, to which Big Rivers responded, while the AG issued none. Neither intervenor submitted comments, making the need for a response from Big Rivers moot. The record is now closed and the matter stands submitted for a decision.

#### BIG RIVERS' PROPOSAL

According to its application, Big Rivers seeks approval to issue the following new or amended evidences of indebtedness:

- a. An Amended and Restated Revolving Line of Credit Agreement between Big Rivers and CFC (the "Amended CFC Revolver");
- b. A Note from Big Rivers to CFC ("Note") in the amount of the CFC commitment under the Amended CFC Revolver of \$50,000,000;
- c. A fourth supplement to the Indenture (the "Supplemental Indenture") from Big Rivers to U.S. Bank National Association, trustee.

The terms of the evidences of indebtedness Big Rivers proposes to issue include the following:

- a. The maturity date of the Note and the Amended CFC Revolver will be July 16, 2017, which extends by one year, from July 16, 2016, the maturity date of the 2009 Revolver.
- b. The interest on advances under the Amended CFC Revolver will be the same as under the 2009 Revolver and will be equal to the CFC line of credit rate as determined by CFC.
- c. The Note will be issued pursuant to and secured under the Supplemental Indenture.
- d. The "up-front fee" and "annual facility fee" in the Amended CFC Revolver will each be 15 basis points, which are reductions from the fees of 25 basis points in the 2009 Revolver.
- e. The terminations of their electric service agreements by Century and Alcan Primary Products Corporation will not trigger an event of default or prevent Big Rivers from making an advance under the Amended CFC Revolver.<sup>4</sup>
- f. Prior to obtaining an advance under the Amended CFC Revolver, Big Rivers must certify that its available cash balance is less than \$35,000,000.
- g. Big Rivers must maintain a minimum members' equity balance/ratio under the Amended CFC Revolver of \$325,000,000 plus 75 percent of its positive net margins for the years after December 31, 2012.

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<sup>4</sup> On May 15, 2013, Big Rivers moved for permission to supplement its application in order to modify the proposed Amended CFC Revolver. As filed, the proposed Amended CFC Revolver exempts the termination by Century and Alcan of their existing electric service agreements from the events that could trigger a default under the Amended CFC Revolver. The modification submitted by Big Rivers in May would extend that exemption to any potential future agreements "with Kenergy Corp. relating to service to an aluminum smelter currently operated by either Century or Alcan entered into following the termination of the existing wholesale power contracts . . . ."

h. Big Rivers' up-front cost in connection with the evidences of indebtedness it proposes will be \$75,000 plus legal fees for its counsel and counsel of CFC as well as miscellaneous filing fees and other transaction costs that cannot be determined until the time of closing.

### DISCUSSION OF ISSUES

As stated in its application, the Amended CFC Revolver will permit Big Rivers to retain access to \$50,000,000 in liquidity for its operations by eliminating the potential event of default that would otherwise be triggered by the Century termination on August 20, 2013. The purpose of the Amended CFC Revolver is to provide funds for Big Rivers' capital expenditures, general corporate use, and for the issuance of letters of credit. In response to its credit ratings having been downgraded to below investment grade subsequent to Alcan's termination notice on January 31, 2013, Big Rivers submitted a Corrective Plan to Achieve Two Ratings of Investment Grade to the Rural Utilities Service. Maintaining liquidity is an important component of this corrective plan.

In its final order in Case No. 2012-00492,<sup>5</sup> the Commission stated:

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 operations risks, and the 112,000 customers who rely on its generation and transmission facilities.

Approving Big Rivers' proposal in this proceeding, the Commission believes, should also be viewed favorably by those same constituencies. Providing Big Rivers with

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<sup>5</sup> Case No. 2012-00492, Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness (Ky. PSC Mar. 26, 2013).

access to \$50,000,000 of liquidity for approximately four years from the date of this Order can assist in facilitating its ability to regain its investment grade credit ratings.

### FINDINGS

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Big Rivers' proposed financing is for lawful objectives within the corporate purposes of Big Rivers' utility operations, is necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair its ability to perform that service, is reasonable, necessary and appropriate for such purposes and should be approved.

IT IS THEREFORE ORDERED that:

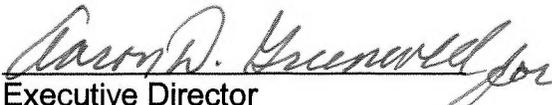
1. Big Rivers' May 15, 2013 Motion to Supplement Filing is granted.
2. Big Rivers is authorized to enter into the Amended CFC Revolver, as described in its application and as modified in its Motion to Supplement Filing.
3. Big Rivers is authorized to issue a note to CFC of \$50,000,000, which is the amount of the CFC commitment under the Amended CFC Revolver, as described in its application.
4. Big Rivers is authorized to issue the Supplemental Indenture to U.S. Bank National Association, trustee, as described in its application.
5. Within 10 days of its execution of these evidences of indebtedness, Big Rivers shall file with the Commission three copies of each document.
6. Any documents filed pursuant to ordering paragraph 5 shall reference this case number and shall be retained in Big Rivers' general correspondence file.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission

ENTERED  
JUL 15 2013  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2013-00125

Jennifer B Hans  
Assistant Attorney General's Office  
1024 Capital Center Drive, Ste 200  
Frankfort, KENTUCKY 40601-8204

Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

Honorable James M Miller  
Attorney at Law  
Sullivan, Mountjoy, Stainback & Miller, PSC  
100 St. Ann Street  
P.O. Box 727  
Owensboro, KENTUCKY 42302-0727