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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

October 22, 2008

PARTIES OF RECORD:
Case No. 2007-00455
Big Rivers Electric Corporation, et al.

Attached hereto is a copy of a letter dated September 29, 2008 from the Commission Staff to James M. Miller, counsel for Big Rivers Electric Corporation, regarding the termination of a leveraged lease with Philip Morris Capital Corporation. All parties were electronically served with a copy of this letter on September 29, 2008.

Sincerely,

Ryan Gatewood
Director, Filings Division

RGR:v

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September 29, 2008

VIA FACSIMILE (270/683-6694)
AND U.S. MAIL

Mr. James M. Miller
Sullivan, Mountjoy, Stainback & Miller
Post Office Box 727
Owensboro, Kentucky 42302-0727

Re: Application of Big Rivers Electric Corporation
Case No. 2007-00455

Dear Mr. Miller:

Commission Staff received by e-mail on September 25, 2008 your letter of that date regarding Big Rivers' intent to terminate three leveraged leases of certain of its generating plants. Also received was an affidavit of C. William Blackburn, Vice President Financial Services, Chief Financial Officer, and Interim Vice President Power Supply for Big Rivers, which discusses in detail the reasons for the lease termination and the resulting financial implications.

According to your letter, the leases were entered into in 2000 with Bluegrass Leasing, a subsidiary of Philip Morris Capital Corporation ("PMCC"), and they include credit support from Ambac Assurance Corporation. Due to a downgrade of Ambac's credit rating in June 2008, Big Rivers' financial exposure under the leases has greatly increased, and this has led Big Rivers to negotiate with PMCC over the past few months in an effort to terminate the leases. Terms of a termination have now been agreed to, with a closing set for September 30, 2008. PMCC will receive at the closing a payment of approximately $214 million, of which approximately $90 million will come from the proceeds of existing investment contracts and the remaining $124 million will come from Big Rivers. Of that $124 million, there will be a cash payment of $109 million and a loan from PMCC of $15 million (up to possibly $20 million). Big Rivers will repay this PMCC loan no later than December 31, 2009. In the event that the "unwind" transaction proposed in the above-referenced case is successfully concluded, the parties have agreed that an E.ON affiliate will reimburse Big Rivers a significant portion of its cost to terminate these leases.

Your letter references Big Rivers' prior termination of similar leases with Bank of America ("BkA") on June 30, 2008, and your June 24, 2008 letter to the Commission which described that transaction and requested a Staff Advisory Opinion as to whether that termination was subject to the Commission's jurisdiction. By letter dated June 27, 2008, a Staff Advisory Opinion indicated that terminating the BkA leases would not result in the issuance of new evidences of indebtedness subject to approval under KRS 278.300, and did not constitute a change in control under KRS 278.020(5) or (6) or KRS 278.218. Your letter states that since the proposed termination of the PMCC lease is similar to the termination of the BkA lease, terminating the PMCC lease does not require Commission approval.

At your request, a telephone conference among the parties to this case was held on September 26, 2008 at 9:00 a.m. The proposed termination of the PMCC lease was discussed, with particular emphasis on the financial implications of the transaction. In response to questions from Commission Staff, you provided additional information via e-mail on the evening of Friday, September 26, and on Saturday, September 27. Your Friday e-mail stated:

> To reiterate comments made on behalf of Big Rivers this morning, Big Rivers is continuing on a path toward buying out the PMCC leveraged leases ("Buyout"). It is not requesting any opinion, consent or approval from the Commission or Commission staff in connection with the Buyout. If Commission staff or any party to this proceeding raises an issue about the proposed Buyout, Big Rivers will consider the risks associated with proceeding with the Buyout in the face of the issue raised. Big Rivers will not consider the absence of an objection to the Buyout by the Commission or any party as waiving or compromising any right the Commission or any party may otherwise have to object to the Buyout.

The foregoing is consistent with Mr. Blackburn's affidavit which states that the information provided by Big Rivers regarding the proposed transaction was "for informational purposes." Blackburn Affidavit, p. 4.

An additional telephone conference was held on September 29 at 9:00 a.m.

Based on the information contained in your September 25, 2008 letter, the affidavit attached thereto, your subsequent e-mails of September 26 and 27, and the discussions at the two conference calls, it appears that the proposed termination of the PMCC lease will neither involve the issuance of indebtedness in excess of two years that would require prior Commission approval under KRS 278.300, or a change in control requiring approval under KRS 278.020(5) or (6) or KRS 278.218. Rather, the proposed lease termination appears to be a transaction that is entirely within the discretion of Big Rivers' management.

There do appear to be aspects of the proposed transaction that will directly and significantly impact the existing and future levels of Big Rivers' rates. This alone distinguishes the proposed transaction from the earlier termination of the BkA leases, which was "entirely without risk to Big Rivers." In the event that Big Rivers decides to terminate the PMCC leases, that decision, as well as the resulting financial implications and rate impacts, will likely be issues that will be scrutinized closely by the Commission in either the above-referenced case or a subsequent rate proceeding.

The foregoing reflects the opinion of Commission Staff. It is non-binding on the Commission in both the proceeding referenced in your letter and every other proceeding. A copy of this letter will be filed in the record of Case No. 2007-00455 and served on all parties of record. Questions concerning this letter should be directed to Richard Raff at 502-564-3940, extension 263.

Sincerely,

David S. Samford
Deputy Executive Director
and General Counsel

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