

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	CASE NO.
ELECTRIC CORPORATION FOR APPROVAL)	2020-00153
TO ISSUE EVIDENCES OF INDEBTEDNESS)	

ORDER

On June 17, 2020, Big Rivers Electric Corporation (BREC) filed an application seeking Commission approval to issue certain evidences of indebtedness in connection with the refunding, by redemption, of Pollution Control Refunding Revenue Bonds, Series 2010A, issued by the County of Ohio, Kentucky (Ohio County), in the aggregate principal amount of \$83,300,000 (2010A Bonds) and the issuance by Ohio County of a like principal amount of Pollution Control Refunding Revenue Bonds, Series 2020 (2020 Bonds). There are no intervenors in this proceeding and BREC responded to one round of discovery from Commission Staff. This matter now stands submitted for a decision based upon the written record.

BACKGROUND

BREC financed construction of the pollution control facilities at its D. B. Wilson Generating Station, in part, with the proceeds from the issuance of two pollution control bonds: (1) the \$58,800,000 Pollution Control Floating Rate Demand Bonds, Series 1983 (1983 Bonds); and (2) the \$83,300,000 Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (1985 Bonds).¹ The 1983 Bonds were refunded by

¹ Application, paragraph 3.

purchase in May 2013 and the outstanding principal amount of the 1985 Bonds was refunded by redemption in 2001 through the issuance by Ohio County of Pollution Control Refunding Revenue Bonds, Series 2001A (2001A Bonds).² In 2010, the 2001A Bonds were refunded, by redemption, and the issuance by Ohio County, of the 2010A Bonds at a fixed rate of 6.00 percent. The 2010A Bonds were subject to an optional redemption call in 2020.³

PROPOSED INDEBTEDNESS

BREC proposes to refund the 2010A Bonds through issuance of the 2020 Bonds on or about July 15, 2020. BREC will apply internal funds to pay the interest due on the 2010A Bonds through the redemption date and either use the proceeds from the 2020 Bonds or funds under BREC's current revolving credit agreement to pay off the principal.⁴ BREC states that using the revolving credit agreement as a bridge loan may be necessary due to COVID-19 pandemic disruption of the credit markets and delaying the issuance of new bonds may allow BREC to maximize the interest rate savings from the new issuance.⁵ BREC has the option of a 1-, 2-, 3-, or 6-month term for the revolving credit with no prepayment penalties as well as the ability to extend the term of the bridge loan.⁶ Based upon the London Interbank Offer (LIBO) rate as of May 31, 2020, plus the LIBO

² See, Case No. 2001-00102, *Big Rivers Electric Corporation's Application for Approval to Amend and Issue Evidence of Indebtedness*, (Ky. PSC June 18, 2001).

³ See, Case No. 2009-00441, *Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness* (Ky. PSC Mar. 31, 2010).

⁴ Application, paragraph 5. See, Case No. 2020-00129, *Electronic Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness* (Ky. PSC May 8, 2020) for BREC's current revolving credit agreement. See also, BREC's Response to Staff's First Request for Information (Staff's First Request), Item 2.

⁵ Application, paragraph 2.

⁶ BREC's Response to Staff's First Request, Item 2.

margin, the bridge loan interest rate would be 2.00 percent and will provide approximately \$278,000 of interest savings per month as compared to the 6.00 interest rate of the 2010A Bonds.⁷ Once the 2020 Bonds are issued, BREC will use the proceeds to repay the principal amount borrowed under the revolving credit facility.⁸

The total up-front cost of the refunding is estimated to be \$1,275,000,⁹ and BREC intends to use internal funds to pay for these up-front costs as well as any interest and fees resulting from the use of the revolving credit facility.¹⁰ The 2020 Bonds Loan Agreement between BREC and Ohio County will consist of the entire principal amount of the 2010A Bonds due on the redemption date or the principal amount due under the temporary bridge loan. The maturity date on the 2020 Bonds Loan Agreement is no later than August 31, 2031, or the end of the maximum useful life of the pollution control facilities, and BREC will repay this loan by paying all debt service on the 2020 Bonds to maturity. The interest rate will be fixed and, given BREC's current credit ratings and current market conditions, is estimated to be 5.00 percent with a yield to investors in the range of 3.75 to 4.25 percent per annum resulting in annual interest rate expense savings of approximately \$1,500,000 to \$1,900,000, or a net present value of approximately \$8,000,000.¹¹ In support of the 2020 Bonds Loan Agreement, BREC will issue its Tenth Supplemental First Mortgage Note, Series 2020 in the name of the trustee for the 2020 Bonds, or U.S. Bank National Association, in an amount up to the aggregate principal

⁷ Application, paragraph 5, and BREC's Response to Staff's First Request, Item 2.

⁸ Application, paragraph 5.

⁹ BREC's Response to Staff's First Request, Item 3.

¹⁰ Application, paragraph 6.

¹¹ *Id.*, paragraph 10, and BREC's Response to Staff's First Request, Item 5.

amount of the 2020 Bonds, or \$83,300,000.¹² BREC will also enter into a Continuing Disclosure Agreement between BREC and the 2020 Bond Trustee.¹³ This agreement provides that BREC will provide certain periodic and material information for use by the holders of the 2020 Bonds and in the secondary bond market. BREC will also deliver to the underwriter, BofA Securities, Inc. (BofA), a Letter of Representations where BREC agrees to pay certain costs and expenses in connection with the issuance of the 2020 Bonds and indemnify BofA for losses in connection with certain matters under the Securities Act of 1933, as amended.¹⁴

BREC also requests the authority to structure the payment of the 2020 Bonds with an amortization of principal payments as opposed to semi-annual interest payments followed by a single bullet payment at maturity, if advantageous. BREC states that this is a decision that will be made close to the time of issuance and will be based upon which method produces a greater interest rate savings.¹⁵

DISCUSSION

BREC states that the potential savings achieved through the refunding of the 2010A Bonds will not only benefit BREC but also BREC's Members and the Members' retail member-customers.¹⁶ Additionally, such savings have the potential to build Member equity and reduce future needs for a rate increase.¹⁷ BREC notes that under the Member

¹² *Id.*, paragraph 7b.

¹³ *Id.*, paragraph 7d and Exhibit 6.

¹⁴ *Id.*, paragraph 7e and Exhibit 7.

¹⁵ *Id.*, paragraph 15.

¹⁶ *Id.*, paragraph 12.

¹⁷ *Id.*

Rate Stability Mechanism (MRSM) Tariff established in Case No. 2020-00064, such savings can be used to reduce the regulatory asset balances or will be passed through to Members and their member-customers as a bill credit.¹⁸

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that BREC's proposed financing is for lawful objects within the corporate purposes of BREC's 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. The Commission recognizes the steps BREC has taken to mitigate the loss of 850 MW of load from the closing of two aluminum smelters, and the resulting below investment grade credit rating. BREC has set forth strategies with a goal to regain all three of its investment credit ratings, which could lower the yield on the 2020 Bonds further in the range of 3.25 percent to 3.75 percent and allow for additional interest expense savings of approximately \$400,000 annually.¹⁹ The flexibility offered by the use of the bridge loan allows BREC to maximize potential savings, and therefore the Commission approves the request to revise the proposed evidences of indebtedness to incorporate the use of the revolving credit facility, if necessary. The Commission also approves BREC's requested flexibility to incorporate amortizing principal payments into the proposed evidences of indebtedness should an amortizing structure provide greater

¹⁸ *Id.*, and Case No. 2020-00064, *Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Deprecation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief* (Ky. PSC June 25, 2020).

¹⁹ Application, paragraph 11.

savings as compared to semi-annual interest payments followed by a single bullet payment at maturity.

IT IS THEREFORE ORDERED that:

1. BREC is authorized to enter into the 2020 Loan Agreement with Ohio County under which Ohio County will loan BREC the entire amount of the 2020 Bonds in order to pay off the 2010A Bonds.

2. BREC is authorized to issue its 2020 Note in the name of the trustee for the 2020 Bonds, U.S. Bank National Association, in an amount equal to the \$83,300,000 aggregate principal amount of the 2020 Bonds.

3. BREC is authorized to enter into the Supplemental Indenture with U.S. Bank National Association, under which the 2020 Note will be issued and secured.

4. BREC is authorized to use its existing revolving credit facility as a temporary bridge loan.

5. BREC is authorized to execute, deliver, and perform its obligation under the agreements and documents as set out in its application and to perform the transactions contemplated by such agreements.

6. The proceeds from the transactions authorized herein shall be used only for the lawful purposes set out in BREC's application.

7. BREC shall, within 30 days of the date of issuance, file with the Commission a statement setting forth the date or dates of issuance of evidences of indebtedness authorized herein, the proceeds of such issuances, the interest rates, the maturity date(s), all fees and expenses involved in the issuance of these evidences of indebtedness,

whether or not the Guaranty was entered into, and, if it was, the economic analysis showing the benefit of the Guaranty.

8. Any document filed pursuant to ordering paragraph 7 of this Order shall reference the case number of this matter and shall be retained in the post-case correspondence file of this matter.

9. The Commission directs BREC to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085²⁰ regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency.

10. This case is closed and removed from the Commission's docket.

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

²⁰ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5-6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1-3.

By the Commission

ENTERED
AUG 13 2020 rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Acting Executive Director

Case No. 2020-00153

*Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Roger Hickman
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420