

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF BIG RIVERS | ) | CASE NO.   |
| ELECTRIC CORPORATION FOR APPROVAL TO | ) | 2021-00468 |
| ISSUE EVIDENCES OF INDEBTEDNESS      | ) |            |

ORDER

On January 26, 2022, Big Rivers Electric Corporation (BREC) filed an application, requesting Commission approval to issue certain evidences of indebtedness in connection with a \$150,000,000 Term Loan from National Rural Utilities Cooperative Finance Corporation (CFC) (2022 Term Loan), including the Loan Agreement, a First Mortgage Note, and a Twelfth Supplemental Indenture that secures the First Mortgage Note. Proceeds from the proposed indebtedness are to reimburse BREC’s general cash reserve and working capital for expenses incurred and to finance further capital project expenditures. There are no intervenors and BREC responded to one request for information. The matter now stands before the commission for a decision based upon the evidentiary record.

LEGAL STANDARD

KRS 278.300 requires Commission approval before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.”<sup>1</sup> The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

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<sup>1</sup> KRS 278.300(1)

The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

### PROPOSED FINANCING

The purpose of the 2022 Term Loan is to reimburse BREC's general cash reserve and working capital for expenses incurred to date and to finance further expenditures related to the 2020 Environmental Compliance Plan Project 12 (Project 12) and the Green Station Conversion Plans (Green Conversion).<sup>2</sup> Project 12 consists of the replacement and upgrade of the existing flue gas desulfurization (FGD) system at D.B. Wilson Station with the FGD presently in place at BREC's Kenneth C. Coleman Station as well as updating dewatering facilities and wastewater treatment improvements. BREC applied for and received approval of a Certificate of Public Convenience and Necessity (CPCN) for Project 12 in Case No. 2019-00435.<sup>3</sup> The Commission also granted a CPCN for BREC to convert Green Station's generating units to burn natural gas in Case No. 2021-00079.<sup>4</sup> Excluding capitalized interest, the total construction cost of Project 12 is

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<sup>2</sup> Application, paragraph 3.

<sup>3</sup> Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of Its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Aug. 6, 2020), Order at 26.

<sup>4</sup> Case No. 2021-00079, *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas-Fired Units and an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC June 11, 2021), Order at 13.

estimated to be \$111.77 million and 45.3 million for the Green Conversion.<sup>5</sup> To date, BREC has expended \$53.7 million for Project 12 and \$25.0 million for the Green Conversion, excluding capitalized interest.<sup>6</sup> The source of these funds has been the existing short-term credit facility approved in Case No. 2020-00129.<sup>7</sup>

BREC initially planned to fund both projects with funds from the Rural Utilities Service (RUS). However BREC had to seek other funding as RUS was unresponsive to their request. BREC indicated that it submitted its application to RUS for financing for Project 12 on February 1, 2021, and RUS has failed to respond to any inquiries since April 2021.<sup>8</sup> BREC proceeded with the capital intensive projects to meet environmental statutory and contractual deadlines, and thus elected to pursue the proposed 2022 Term Loan. BREC also noted that in order to complete Project 12 on schedule, BREC began construction; consequently, RUS financing is no longer available for Project 12.<sup>9</sup>

BREC stated that the interest rate will be established at the date on which the draws are processed and are anticipated to be in the range of 2.50 to 3.00 percent.<sup>10</sup> However, this interest rate was updated to 3.50 percent through discovery due to changing market conditions.<sup>11</sup> BREC expects transaction costs associated with the

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<sup>5</sup> Application, paragraphs 6 and 7.

<sup>6</sup> BREC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Feb. 23, 2022), Item 1. The sum of the two projects is greater than the request and will be funded with internal cash reserves

<sup>7</sup> Case No. 2020-00129, *Electronic Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness* (Ky. PSC May 8, 2020).

<sup>8</sup> Application, paragraph 18.

<sup>9</sup> BREC's Response to Staff's First Request, Item 4.

<sup>10</sup> Application, paragraph 13.

<sup>11</sup> BREC's Response to Staff's First Request, Item 2.

proposed transaction to total \$25,000.<sup>12</sup> These costs include legal fees, miscellaneous filing fees, and other transaction costs. BREC intends to close on the proposed 2022 Term Loan immediately following Commission approval.<sup>13</sup>

### DISCUSSION AND FINDINGS

The Commission finds that BREC has satisfied the legal standards established in KRS 278.300 to issue indebtedness for the proposed 2022 Term loan with CFC. The legal standard set forth in KRS 278.300(3) is (1) whether the financing is for a lawful object within the utility's corporate purpose; (2) whether the financing is necessary or appropriate for the proper performance by the utility of its service to the public; and (3) whether the approval of financing will impair its ability to perform that service and is reasonably necessary and appropriate for such purpose. The Commission finds that the filing satisfies the legal standard of KRS 278.300(3) for the following reasons: (1) the proposed financing meets the lawful object of BREC's purpose to provide adequate, efficient and reasonable service<sup>14</sup> as the Commission authorized the CPCN for Project 12 finding that the project reflected the most reasonable least-cost alternative to comply with the environmental regulations<sup>15</sup> and authorized the CPCN for the Green Station Conversion finding that BREC satisfied the requirements of KRS 278.020;<sup>16</sup> (2) the proposed financing is necessary for the proper performance of the utility to meet environmental regulations while providing adequate service to its customers and Owner-Members; and

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<sup>12</sup> *Id.*, Item 3.

<sup>13</sup> Application, paragraph 16.

<sup>14</sup> KRS 278.030(2).

<sup>15</sup> Case No. 2019-00435, *BREC* (Ky. PSC Aug. 6, 2020), final Order at 19–20.

<sup>16</sup> Case No. 2021-00079, *BREC* (Ky. PSC June 11, 2021), final Order at 12.

(3) the proposed financing will not impair BREC's ability to provide service because it is necessary to fund capital projects that will allow for environmental compliance.

IT IS THEREFORE ORDERED that:

1. BREC is authorized to enter into the 2020 Term Loan as described in its application in an amount up to \$150,000,000.

2. The proceeds from the transaction authorized herein shall be used only for the lawful purposes set out in the application.

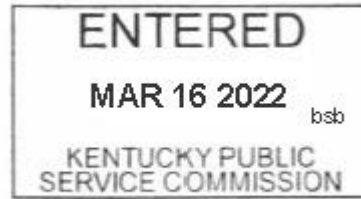
3. BREC shall, within 30 days from the date of issuance, file with the Commission a statement setting forth the date or dates of issuance of evidences of indebtedness authorized herein, the price paid, the interest rate, and all fees and expenses, including underwriting discounts or commissions or other compensation, involved in the issuance and distribution.

4. Any documents filed in the future pursuant to ordering paragraph 3 herein shall reference this case number and shall be retained in the utility's post-correspondence file.

5. 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.

By the Commission



ATTEST:

  
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