

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)	CASE NO.
CORPORATION FOR AN ADJUSTMENT OF)	2012-00535
RATES)	

ORDER

By Order issued on October 29, 2013 (“Rate Order”), the Commission granted Big Rivers Electric Corporation (“Big Rivers”) an increase in its wholesale base rates to generate additional annual revenues of \$54,227,241.¹ A motion was filed by Big Rivers on November 20, 2013, seeking clarification on the issue of whether it has the authority to record as a regulatory asset the severance costs it incurs as a result of idling the Coleman Generating Station. On that same date, the Attorney General for the Commonwealth of Kentucky (“AG”), Ben Taylor and Sierra Club (“Sierra Club”), and Kentucky Industrial Utility Customers, Inc. (“KIUC”) (collectively, “the Intervenors”) filed a request for rehearing on three issues related to the Rate Order. On November 27, 2013, Big Rivers filed a response in opposition to the Intervenors’ request for rehearing. On December 9, 2013, Big Rivers filed a Motion for Leave to Withdraw its Motion for Clarification. With this Order, the Commission grants Big Rivers’ motion for leave to withdraw its motion for clarification, grants rehearing on one of the issues raised in the Intervenors’ petition, and denies rehearing on the remaining two issues raised by the Intervenors. Descriptions of the issues raised by the Intervenors and our decisions thereon are discussed as follows.

¹ Big Rivers had sought an increase of approximately \$74.5 million.

INTEVENORS' REHEARING REQUESTS

Coleman Depreciation Expense

The Rate Order required that Big Rivers defer the depreciation on Coleman in a regulatory asset account and stated that the deferred depreciation expense may be considered for recovery at a future point in time. The Intervenor claim the Commission erred by not excluding this depreciation expense from current rates and by not disallowing any such recovery in the future.² The Intervenor contend that generally accepted accounting principles ("GAAP") will not permit the deferral of an expense as a regulatory asset unless the Commission provides reasonable assurance that it is probable that Big Rivers will recover the expense in the future.³ They further contend that our decision virtually guarantees that Big Rivers will recover the Coleman depreciation expense from customers in the future.⁴

In its response to the Intervenor's petition, Big Rivers points to the actual Rate Order language which states that the deferred "depreciation expense may be considered for recovery in rates at a future point in time."⁵ Big Rivers went on to state that the Commission could not have made the error claimed by the Intervenor of allowing recovery of the Coleman depreciation in rates because the Rate Order did not contain such a decision.⁶ Big Rivers states that it does not agree with the Intervenor

² Petition for Rehearing of Kentucky Industrial Utility Customers, Inc., Attorney General, and Ben Taylor and the Sierra Club at 10.

³ *Id.*, at 5.

⁴ *Id.*, at 6.

⁵ Response of Big Rivers to Petition for Rehearing of Kentucky Industrial Utility Customers, Inc., Attorney General, and Ben Taylor and the Sierra Club at 2.

⁶ *Id.*

that deferring depreciation expense in accordance with the Rate Order would violate GAAP and argues that the Intervenors have not shown that GAAP somehow commits the Commission to grant rate recovery in contravention of the plain language of the Rate Order.⁷ Finally, Big Rivers points out that KIUC supported, as an alternative to ceasing depreciation on an idled plant, the deferral and recording as a regulatory asset the idled plant's depreciation and that no other intervenor opposed this alternative. Given that KIUC's current opposition represents a disavowal of its earlier position and that the AG and Sierra Club had earlier opportunities to raise concerns they may have had with the KIUC alternative but did not raise them, Big Rivers contends that rehearing on this issue should be denied.

The Commission notes, as did Big Rivers, that the language in the Rate Order states that the Coleman "depreciation expense may be considered for recovery in rates at a future point in time." Contrary to the Intervenors' argument, the Rate Order provided no specific guarantee of Big Rivers' recovery of the deferred depreciation in the future. The Commission also notes that the Rate Order authorizes the Coleman depreciation to be deferred for ratemaking and accounting purposes. While the Commission has exclusive jurisdiction over Big Rivers as to rates and regulatory accounting, it has no jurisdiction over Big Rivers' obligations under GAAP accounting. If Big Rivers' load-mitigation plan, which the Rate Order did not criticize, is successful and Coleman is a revenue-producing asset in the future, Big Rivers should have the right to seek consideration of offsetting those future Coleman revenues against its deferred Coleman depreciation. If the mitigation plan is unsuccessful and Coleman produces no or little future revenue, it would not be reasonable to require ratepayers to pay the

⁷ *Id.*, at 3.

deferred Coleman depreciation. These are the factors considered by the Commission in reaching its decision on the Coleman depreciation and why the Rate Order stated that future recovery of this depreciation “may be considered.”

Finally, in recognition that the deferral adopted by the Commission was KIUC’s alternative recommendation and that the AG and Sierra Club offered no opposition to this alternative, we conclude that none of the Intervenors has presented sufficient grounds to support rehearing on this issue. Accordingly, the Commission finds that the Intervenors’ rehearing request on the deferral of the Coleman depreciation should be denied.

Filing of SSR Agreement with the Federal Energy Regulatory Commission (“FERC”)

On November 1, 2013, MISO filed with FERC the SSR agreement entered into by MISO and Big Rivers regarding the operation of Coleman. The Intervenors claim that the agreement provides for Big Rivers to receive \$40.974 million annually from MISO for fixed and capital-cost recovery related to operation of Coleman as an SSR, or \$12.313 million greater than the amount estimated by Big Rivers and accepted by the Commission in setting Big Rivers’ revenue requirement in this case. While the agreement is subject to FERC approval, the Intervenors argue that the Commission should reduce the amount of the increase granted to Big Rivers by \$12.313 million (or the amount approved by FERC in excess of the \$28.661 million now reflected in Big Rivers’ rates) for as long as the SSR agreement is in effect.

The Intervenors state that the Commission can reduce rates and order refunds of the \$12.313 million difference or re-open the record and take additional evidence on this issue. The Intervenors note that once the SSR agreement expires, the transmission

revenues presently being used to offset Century's SSR costs will begin to be received by Big Rivers and will reduce Big Rivers' annual revenue requirement by \$7.737 million.

In its response to the Intervenor's petition, Big Rivers states that the documents in MISO's November 1, 2013 FERC filing did not exist at the time of the hearing in this case, or at the time the Rate Order was issued, and cannot be presented for rehearing. Citing the Commission's recent order denying the AG's request for rehearing in Case No. 2012-00578,⁸ Big Rivers states that the MISO documents are "new evidence which did not exist" at the of the formal hearing and therefore may not be considered for rehearing. Hence, states Big Rivers, rehearing on this issue should be denied.

The Commission notes that the issue of revenue under an SSR agreement was extensively discussed during this case. While the SSR agreement was filed at FERC after the date of the Rate Order, Big Rivers' response to the Intervenor's petition did not affirmatively state that it was unaware prior to the Rate Order that \$40.974 million was the annual amount of SSR revenue, nor did Big Rivers affirmatively state why it did not disclose that amount immediately upon knowing it was different (and over 40 percent greater) than its estimate that was reflected in this case.

The Commission takes note that, as reflected in the record of this case and other Big Rivers cases, either recently adjudicated or pending before the Commission, Big Rivers initiated the process of addressing the possible idling of Coleman in December of 2012 by filing an Attachment Y-2 request asking that MISO perform a reliability study to

⁸ Case No. 2012-00578, Application of Kentucky Power for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief (Ky. PSC Nov. 15, 2013).

determine if Coleman could be idled if the Hawesville smelter operated at its historical load of 482 MW. In May 2013, Big Rivers converted its Attachment Y-2 into an Attachment Y seeking permission from MISO to idle Coleman, and in July of 2013, it received MISO's Attachment Y report on Coleman. After receiving that report, in August of 2013, Big Rivers and MISO began negotiations, which eventually resulted in the agreement filed with FERC on November 1, 2013. Based on this FERC filing date, there is credible reason to believe that Big Rivers may have been aware of the higher amount of SSR revenues it would receive prior to issuance of the Rate Order. Thus, there is an issue of whether the MISO FERC filing should be considered newly discovered evidence. Therefore, the Commission will grant rehearing to explore the issue of when the amount of SSR revenues was determined and known to Big Rivers and whether any such additional revenues should be recognized in establishing Big Rivers' revenue requirement.

Big Rivers' Load-Mitigation Plan

The Intervenors cite the language in the Rate Order wherein the Commission "finds it reasonable to afford Big Rivers the time to pursue its mitigation strategies . . ." and claim the Commission should have specified how much time to allow before assessing whether Big Rivers' mitigation strategies have failed.⁹ The Intervenors also argue that the order does not set forth specific parameters regarding implementation of the plan, including how to assess whether the plan has failed.¹⁰

⁹ Petition for Rehearing of Kentucky Industrial Utility Customers, Inc., Attorney General, and Ben Taylor and the Sierra Club at 15.

¹⁰ *Id.*

The Intervenors argue that the Commission must establish specific parameters for the mitigation plan or customers will be “left on the hook indefinitely to continue to pay for rate increases that may never be alleviated.”¹¹ They state that the Commission should define achievement goals, define consequences of those goals’ not being met, and make clear that it will review anew the mitigation plan in Case No. 2013-00199.¹²

In its response Big Rivers quotes the statement in the Intervenors’ request, “Unless the Commission sets forth specific parameters that Big Rivers must adhere to in implementing its mitigation plan, then its customers will be left on the hook indefinitely to continue to pay for rate increases that may never be alleviated.” Big Rivers thereupon claims that the Intervenors fail to explain how the Rate Order could possibly terminate the Commission’s authority over utilities and rates under KRS 278.¹³ Citing the Intervenors’ statement that “once a rate increase is approved, it is permanent,” Big Rivers contends the Intervenors cite no authority supporting that claim, and again fail to address the Commission’s authority over utilities and rates pursuant to KRS 278.¹⁴

Big Rivers states that the Intervenors failed to raise this issue during the case in chief, despite many opportunities to do so, and therefore, rehearing should be denied. It states that rehearing should be denied, as the Intervenors had the opportunity to

¹¹ *Id.*

¹² *Id.*

¹³ Response of Big Rivers to Petition for Rehearing of Kentucky Industrial Utility Customers, Inc., Attorney General, and Ben Taylor and the Sierra Club at 6-7.

¹⁴ *Id.*, at 7.

present arguments about the issue, but chose not to do so until filing their motion for rehearing.¹⁵

The Commission finds that the Intervenors' arguments are simply challenges to Big Rivers' load-mitigation plan. These arguments could have been, and should have been, raised earlier in the case, but were not. Therefore, these arguments are not now sufficient grounds for rehearing in this case. However, while we are denying rehearing on this issue, the Commission will allow the parties to explore this issue in Big Rivers' pending case, Case No. 2013-00199.

SUMMARY

Based on the requests of Big Rivers and the Intervenors, the Commission HEREBY ORDERS that:

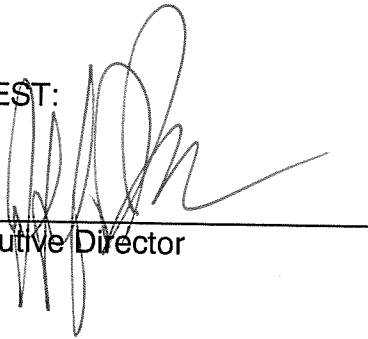
1. Big Rivers' motion for leave to withdraw its motion for clarification is granted.
2. The Intervenors' request for rehearing on the deferral of the Coleman depreciation is denied.
3. The Intervenors' request for rehearing on the issue of the SSR revenues included in the SSR agreement filed with FERC by MISO is granted, and a procedural schedule for conducting discovery on this issue will be issued in the near future.
4. The Intervenors' request for rehearing on the need for specific parameters regarding Big Rivers' load-mitigation plan is denied, but evidence on the load-mitigation plan shall be taken in Case No. 2013-00199.

¹⁵ *Id.*

By the Commission

ENTERED ¹¹
DEC 10 2013
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