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Skill. Integrity. Efficiency.

November 13, 2017

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COMMISSION

Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2016 through April 30, 2017*
Case No. 2017-00287

Dear Ms. Pinson:

Enclosed for filing in the above-referenced matter are an original and ten copies of Big Rivers Electric Corporation's post-hearing brief. I certify that on this date, a copy of this letter and a copy of the brief were served on each of the persons listed on the attached service list by first-class mail.

Sincerely,

Tyson Kamuf
Counsel for Big Rivers Electric Corporation

TAK/abg

Enclosures

cc: Service List

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PSC Case No. 2017-00287

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM NOVEMBER 1, 2016 THROUGH APRIL 30, 2017	)	**Case No. 2017-00287**

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PUBLIC SERVICE COMMISSION

POST-HEARING BRIEF OF BIG RIVERS ELECTRIC CORPORATION

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM NOVEMBER 1, 2016 THROUGH APRIL 30, 2017	)	Case No. 2017-00287

POST-HEARING BRIEF OF BIG RIVERS ELECTRIC CORPORATION

Comes Big Rivers Electric Corporation ("Big Rivers"), by counsel, and for its post-hearing brief to the Kentucky Public Service Commission (the "Commission"), states as follows:

I. INTRODUCTION

The purpose of this proceeding is to review the reasonableness of the application of Big Rivers' fuel adjustment clause ("FAC") from November 1, 2016, through April 30, 2017. During the period under review, Big Rivers properly calculated and applied the charges under its FAC tariff, and its fuel procurement practices were proper.

No party in this case has alleged that Big Rivers incurred unreasonable fuel costs. However, intervenor Kentucky Industrial Utility Customers, Inc. ("KIUC"), through its witness Lane Kollen, challenged the reasonableness of the methodology Big Rivers utilizes to allocate fuel costs between sales to native load customers and off-system sales for purposes of calculating FAC charges. KIUC has asked the Commission (i) to force Big Rivers to switch to KIUC's preferred allocation methodology immediately; (ii) to disallow $770,174 included in Big Rivers' FAC charges for the January 2017 through April 2017 expense months; and (iii) to order Big Rivers to refund that amount plus interest.

However, as discussed below, there is no single correct allocation methodology. Big Rivers' use of its current allocation methodology during the period under review was reasonable and proper, and Big Rivers' continued use of its current allocation methodology until it files its next base rate case is reasonable and proper, given: (i) the length of time Big Rivers has used it, (ii) the Commission's prior acceptance of it, (iii) the fact that changing the methodology as part of a base rate case would have virtually no net impact on Big Rivers' revenues or rates to its three distribution cooperative Member-owners (the "Members") or their rates to their retail members/customers, (iv) the fact that changing the methodology outside of a base rate case would not necessarily result in lower FAC charges, and (v) the fact that Big Rivers' current methodology has resulted in FAC charges that have been reasonable and that compare favorably to the other utilities in Kentucky. Moreover, forcing Big Rivers to change methodologies outside of a base rate case would be unreasonable and could harm Big Rivers' Members. Finally, Mr. Kollen's calculation of its proposed refund amount is flawed because it includes the January 2017 expense month. As such, the Commission should deny KIUC's requests.

II. THERE IS NO SINGLE CORRECT FUEL COST ALLOCATION METHODOLOGY

There is no single correct fuel cost allocation methodology. Although the five other Commission-jurisdictional electric utilities with generating resources, two of which are under common ownership, utilize some form of methodology that involves the stacking of resources and allocating the lowest cost resources to native load, none of these other utilities (with the exception of Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU")) utilize the same stacking methodology.[1] The differences in the other utilities' methodologies are not merely nuances, and they can be striking. For example, at least some of

[1] Rebuttal Testimony of Lindsay N. Durbin at p. 8, l. 8-13.

the utilities that employ stacking utilize an incremental stacked cost methodology, where only incremental fuel costs are allocated to off-system sales, while others may allocate a proportionate share of all fuel costs in their stacking methodologies.[2] If Big Rivers were to switch to an incremental stacked cost methodology, its FAC charges could actually increase.[3]

Big Rivers does not follow a stacking approach. Instead, Big Rivers uses its monthly system average fuel cost per kWh generated to allocate fuel costs between native load sales and off-system sales for purposes of calculating FAC charges. This system average fuel cost is then multiplied by the volume of off-system sales from generation during the month and subtracted from the total recoverable fuel expense for purposes of calculating FAC charges.[4]

Big Rivers has used some form of this system average fuel cost methodology to calculate FAC charges since the 1980s, and the Commission has explicitly approved the use of system average fuel costs in previous Big Rivers FAC review cases.[5] As Ms. Durbin explained in her rebuttal testimony:

> In Case No. 94-458-A, for example, the Commission explained that "Big Rivers uses system average fuel cost to allocate fuel costs among its native load customers and firm off-system customers. It uses incremental costs, however, to allocate fuel costs to non-firm off-system sales." The Commission found this methodology reasonable. Although Big Rivers generally used incremental costs to allocate fuel costs to non-firm off-system sales at that time, Big Rivers also used system average fuel costs to allocate fuel costs to non-firm off-system sales when Big Rivers' Energy Management System was not functioning properly, and the Commission also found that practice to be reasonable. These Commission findings remain valid at this time.[6]

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[2] *Id.* at p. 14, l. 11 through p. 15, l. 8.
[3] *Id.* at p. 15, l. 8-12.
[4] *Id.* at p. 5, l. 16-19; Big Rivers' response to Item 1 of KIUC's First Request for Information.
[5] Rebuttal Testimony of Lindsay N. Durbin at p. 6, l. 1-14.
[6] *Id., quoting and citing In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995*, Order, Case No. 94-458-A (June 19, 1996), at p. 2, *and In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1992 to October 31, 1994*, Order, Case No. 94-458 (March 5, 1996). Copies of these two orders are attached hereto.

Additionally, Big Rivers used its current allocation methodology (which allocates system weighted average fuel costs to both firm and non-firm off-system sales) to establish base rates in each of the three rate cases Big Rivers has filed since the closing of the "Unwind Transaction" in July 2009, whereby Big Rivers terminated the lease of its generating units to affiliates of LG&E and KU, took back control and operation of its generating units, and re-established its FAC.[7] This includes Big Rivers' most recent base rate case, Case No. 2013-00199, in which its rates were established based on the assumption that fuel costs were allocated for FAC purposes using system weighted average costs, which Mr. Kollen acknowledged in that case,[8] and the Commission found that the rates granted to Big Rivers were fair, just and reasonable.[9]

The fact that Big Rivers does not utilize a stacked cost methodology does not make Big Rivers' methodology unreasonable. Interestingly, Mr. Kollen claims that Big Rivers should utilize a stacked cost methodology on the grounds that other utilities in Kentucky utilize that approach,[10] yet his calculated refund amount is based on a methodology utilized by no other utility in Kentucky. Presumably, Mr. Kollen believes the approach he utilized to calculate the $770,174 that he urges the Commission to disallow is reasonable.[11] But that approach is based on a monthly stacking that differs from any methodology employed by the other Commission-jurisdictional utilities, including both East Kentucky Power Cooperative ("EKPC") and Duke

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[7] Rebuttal Testimony of Lindsay N. Durbin at p. 6, l. 15 through p. 7, l. 4.

[8] *Id.* at p. 7, n. 5, *quoting* KIUC's response to Item 1 of the Commission Staff's Initial Request for Information in Case No. 2013-00199 ("Among the Company's coal-fired capacity, the Wilson and Coleman plants have the lowest fuel cost per kWh. When these plants either are shut down or operated as SSRs, the average fuel cost recoverable from customers through the FAC will increase").

[9] Rebuttal Testimony of Lindsay N. Durbin at p. 6, l. 4-8.

[10] Direct Testimony of Lane Kollen at p. 18 ("To the extent possible, the Commission should require a consistent methodology for the allocation of fuel expense to native load customers among all Kentucky electric utilities").

[11] Rebuttal Testimony of Lindsay N. Durbin at p. 8, l. 20-22.

Energy Kentucky ("Duke").[12] Mr. Kollen even acknowledges that his approach is "similar to that used by" EKPC and Duke,[13] and he does not claim he is using their exact methodologies.

It has become clear that uniformity is not Mr. Kollen's primary concern. For example, Mr. Kollen fails to explain why it would not be equally appropriate for Big Rivers adopt an incremental stacked cost methodology like LG&E, KU, and Kentucky Power. As Ms. Durbin has explained, an incremental stacked cost approach would only allocate to off-system sales the fuel costs required to produce the additional MWhs of energy needed for the off-system sales and would therefore not include the fuel portion of start-up and no load costs required to bring a unit to minimum generating levels when any portion of that unit is used to serve native load, while Big Rivers' system average cost approach allocates a portion of all fuel costs to off-system sales, including the fuel portion of start-up and no load costs.[14]

Similarly, Mr. Kollen asserts in his direct testimony that the Commission should follow FERC precedent, citing FERC Opinion No. 501.[15] But Mr. Kollen ignores the fact that in that opinion, FERC adopted an approach that involved only the allocation of incremental costs, rather than Mr. Kollen's preferred approach.[16]

Instead of demanding strict adherence to uniformity, KIUC's and Mr. Kollen's preferred methodology changes depending on which approach will reap the biggest windfall for KIUC's clients at the time. In the 1990's, KIUC, through its witness Mr. Kollen, argued that the Commission should prohibit Big Rivers from utilizing a stacked cost approach and should

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[12] *Id.* at p. 8, l. 22 through p. 9, l. 8.
[13] Direct Testimony of Lane Kollen at p. 5, l. 8-10.
[14] Rebuttal Testimony of Lindsay N. Durbin at p. 15, l. 6-8.
[15] Direct Testimony of Lane Kollen at p. 8.
[16] *See Golden Spread Elec. Coop., Inc. Lyntegar Elec. Coop., Inc. Farmers' Elec. Coop., Inc. Lea Cty. Elec. Coop., Inc. Cent. Valley Elec. Coop., Inc. Roosevelt Cty. Elec. Coop., Inc.*, 123 FERC ¶ 61047, 61244-46 (Apr. 21, 2008).

instead force Big Rivers to utilize a system average cost approach for all sales.[17] In 2014, KIUC and Mr. Kollen flipped and instead argued that Big Rivers should be required to utilize an incremental stacked cost approach, and in fact, Mr. Kollen claimed at that time that an incremental stacked cost approach was the only allowable methodology.[18] However, in 2017, KIUC and Mr. Kollen have changed once again, and they now take the position that the only allowable methodology (at least for Big Rivers) is the one "similar to" what Mr. Kollen claims is the EKPC/Duke method and which is not limited to incremental costs.

Thus, a lack of uniformity is an insufficient basis for determining whether or not the Big Rivers methodology is reasonable, and a stacking methodology is not the only reasonable methodology.

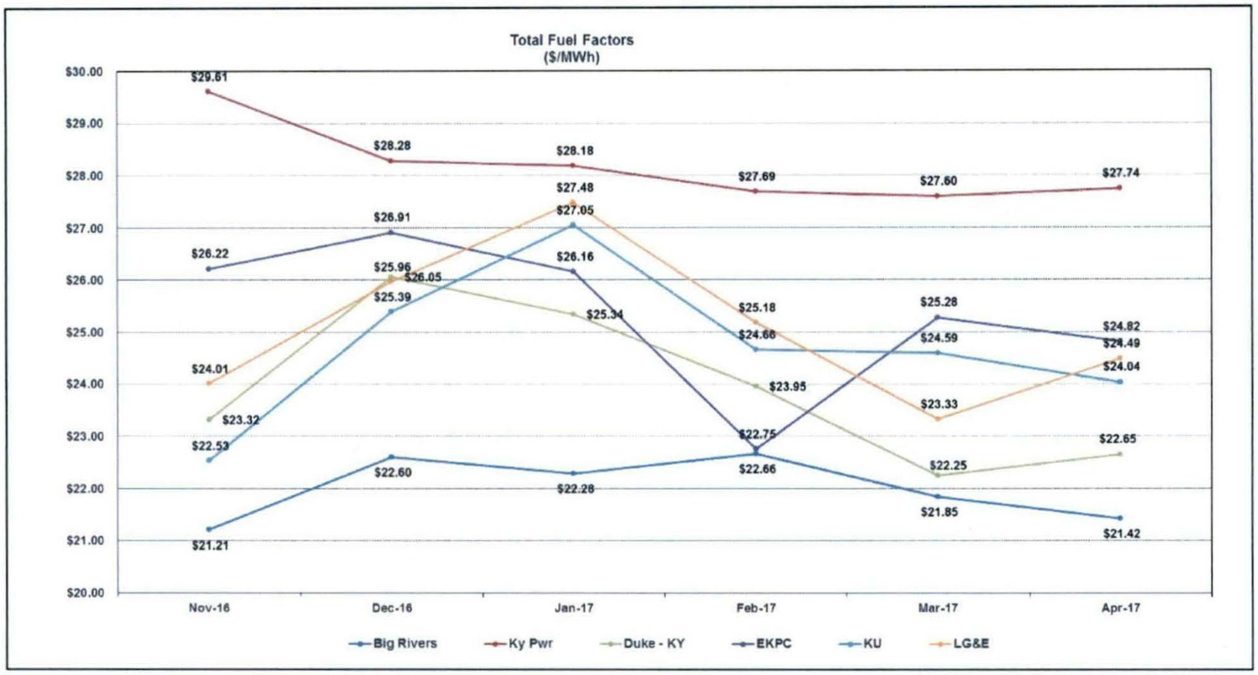
III. BIG RIVERS' CURRENT ALLOCATION METHODOLOGY IS REASONABLE AND RESULTS IN REASONABLE FAC CHARGES

Big Rivers' current allocation methodology is reasonable. Not only has Big Rivers utilized and the Commission accepted Big Rivers' use of some form of a system average fuel cost methodology since the 1980's, Big Rivers has utilized its current methodology since 2009. Additionally, Big Rivers' use of its current methodology has resulted in Big Rivers having the

[17] *See In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995*, Order, Case No. 94-458-A (June 19, 1996), at p. 2.

[18] *See* Big Rivers' Hearing Exhibit 1 (which includes KIUC's response to Item 4a of the Commission Staff's First Request for Information in consolidated Case Nos. 2014-00230 and 2014-00455 and where KIUC states that as a result of the "March 5, 1996 Order in Case No. 94-458 . . . KIUC believes that the use of incremental fuel costs allocation method is required and that the use of the average allocation method is not allowed"). In the March 5, 1996, order in Case No. 94-458, the Commission defined incremental costs as "'[t]he additional costs incurred from the production or delivery of an additional unit of utility service, usually the minimum capacity or production that can be added.'" Order, Case No. 94-458 (March 5, 1996) at p. 2, n. 2, *quoting* P.U.R. Glossary For Utility Management 75 (Public Utilities Reports, Inc. 1992). The incremental cost approach referenced in that order is clearly different from the methodology Mr. Kollen uses to calculate his proposed refund amount as that amount includes all fuel costs including start-up and no load costs and not just the incremental costs. *See* Rebuttal Testimony of Lindsay N. Durbin at p. 14, l. 11 through p. 15, l. 12; Hearing Testimony of Lindsay N. Durbin, October 16, 2017 ("Durbin Hearing Testimony"), Tr. 2:24'24" – 2:28'23".

lowest FAC charges of the Commission-jurisdictional utilities with generating resources, as can be seen on the chart below, which compares each of those utilities' average monthly fuel cost ($/MWh) allocated to native load customers each month of the current FAC review period:[19]



It is important to note that requiring Big Rivers to switch to a stacking methodology will not necessarily result in lower FAC charges. For example, switching to an incremental stacking methodology could result in higher FAC charges. Also, Big Rivers currently purchases power from Henderson Municipal Power & Light's Station Two generating units ("Station Two") under contracts that Henderson says require Big Rivers to generate, take, and pay for power that Big Rivers does not want. Because this power is generated regardless of whether Big Rivers makes any off-system sales, it would be entirely reasonable for the Station Two units to be the last units allocated to off-system sales. This approach is consistent with the Commission's order in Case No. 94-458-A, where the Commission held that it was reasonable for Big Rivers to allocate its

[19] Rebuttal Testimony of Lindsay N. Durbin at p. 14. A larger version of this chart is also attached hereto.

highest cost units to native load customers because of the take-or-pay provisions of the contracts for the coal for those units:

> The Commission further finds that, given the terms of its coal supply contracts for the Wilson and Green Generating Stations, Big Rivers' dispatching methods are not unreasonable. These contracts require the purchase of baseload quantities of fuel regardless of whether the coal is used. Big Rivers therefore dispatches these plants – its most expense units – before dispatching its lower cost units. Native load customers thus pay the higher costs, while non-firm off-system customers are charged the lower incremental fuel costs. Because of those contracts' take-or-pay provisions, however, the incremental cost of burning their coal is zero.[20]

Under a stacked cost approach where the Station Two units are allocated to native load first, Big Rivers' FAC charges during the period under review would have been $802,469 higher than they were under Big Rivers' current methodology.[21]

Because Big Rivers believes its current allocation methodology is reasonable and results in reasonable FAC charges to its members, Big Rivers is not proposing any particular stacking methodology at this time. But Big Rivers is pointing out that a stacked cost methodology would not necessarily result in lower FAC charges, and that Mr. Kollen's preferred stacked cost methodology is not necessarily the only, or even the most reasonable, stacked cost approach for Big Rivers. Big Rivers has committed to proposing to switch to a stacked cost methodology as part of its next base rate filing, but there are significant costs and time involved in developing the tools necessary to implement such a methodology.[22] Allowing Big Rivers to continue to employ its current methodology until it files its next base rate case is entirely reasonable and results in reasonable FAC charges.

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[20] *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995*, Order, Case No. 94-458-A (June 19, 1996), at p. 3.
[21] Rebuttal Testimony of Lindsay N. Durbin at p. 15, l. 8-12, and p. 21, l. 13 through p. 22, l. 17.
[22] Big Rivers' response to Item 2 of the Commission Staff's Post-Hearing Requests for Information; Durbin Hearing Testimony, Tr. 1:57'28"; *id.*, Tr. 2:10'57" – 2:15'00".

IV. REQUIRING BIG RIVERS TO SWITCH TO A STACKED COST METHODOLOGY OUTSIDE OF A BASE RATE CASE WOULD BE UNREASONABLE BECAUSE IT WOULD HARM BIG RIVERS' MEMBERS AND VIOLATE THE MATCHING PRINCIPLE

Since Big Rivers has already committed to proposing a stacked cost methodology as part of its next base rate case, KIUC is left to argue that the Commission should force Big Rivers to change methodologies immediately because changing methodologies outside of a base rate case is the only way KIUC's clients receive a windfall. As Ms. Durbin explained in her direct testimony, if Big Rivers' allocation methodology is changed as part of a base rate case and results in lower FAC charges, there will be a corresponding increase in Big Rivers' base rates, and the effective rate to Big Rivers' Members will be virtually unchanged:

> Big Rivers is a not-for-profit Member-owned cooperative. As such, when Big Rivers' base rates are established, Big Rivers' off-system sales margins are not shared with shareholders but rather directly offset the revenue requirement that must otherwise be recovered through its rates to its Members. Thus, the greater Big Rivers' off-system sales margins, the lower Big Rivers' rates to its Members and their rates to their retail customer/members.
>
> Further, changing the amount of fuel costs allocated to native load sales will change the amount of fuel costs allocated to off-system sales. If less fuel costs are allocated to native load sales, more fuel costs will be allocated to off-system sales, and vice versa. And all else being equal, assigning more fuel cost to off-system sales will reduce Big Rivers' off-system sale margins. Since Big Rivers has no shareholders to absorb such a loss, reducing Big Rivers' off-system margins increases the amount Big Rivers must recover through its rates to its Members. Thus, for Big Rivers, allocating less fuel costs to its FAC charges equates to higher base rates to those Members. In other words, if Mr. Kollen is correct that Big Rivers' FAC charges are unreasonably high as a result of its chosen allocation methodology, then Big Rivers' base rates are equally unreasonably low.[23]

Forcing Big Rivers to change to Mr. Kollen's preferred methodology without making a corresponding change in base rates would result in a short-term reduction in Big Rivers' FAC charges to its Members; however, forcing such a change outside of a base rate case would be

[23] Rebuttal Testimony of Lindsay N. Durbin at p. 9, l. 13 through p. 10, l. 12.

unreasonable because it would ultimately harm Big Rivers' Members and would violate the matching principle.

At the hearing in this matter, Mr. Kollen insinuated that the Commission should order a change in methodologies outside of a base rate case because Big Rivers was allegedly over-earning based on the 2014 margins Mr. Kollen had projected for Big Rivers. But a FAC review proceeding is not the appropriate venue for such an argument. The proper venue is a general rate case where the Commission can look at Big Rivers' overall financial condition to determine whether Big Rivers is truly over-earning, rather than unfairly reducing Big Rivers' FAC charges based on a single isolated item of revenue, such as off-system sales margins.

Additionally, the 2014 margins Mr. Kollen had projected for Big Rivers were a result of the Polar Vortex that occurred in early 2014.[24] The cash Big Rivers generated from its off-system sales margins during the Polar Vortex allowed Big Rivers to provide a credit to its Members of approximately $311,000 per month for 15 months.[25] But the Polar Vortex was an anomaly. For 2016, Big Rivers earned approximately $20.5 million in off-system gross sales, but after accounting for the $19 million in Wilson operating costs that are not included in base rates, Big Rivers' realized off-system sales margins were only $1.5 million for 2016.[26]

Thus, despite Mr. Kollen's insinuations to the contrary, Big Rivers is not in a position to absorb the loss that would result from switching to Mr. Kollen's preferred allocation methodology outside of a base rate case, and Big Rivers does not have shareholders to absorb such a loss. Therefore, if the Commission forces Big Rivers to make such a change outside of a base rate case, Big Rivers would have no choice but to file for emergency rate relief, and the

[24] Durbin Hearing Testimony, Tr. 1:16'06" – 1:17'33"; *id.*, Tr. 1:23'10" – 1:26'48".
[25] *Id.*, Tr. 1:16'06" – 1:17'33"; *id.*, Tr. 1:23'10" – 1:26'48".
[26] Big Rivers' response to Item 1 of the Commission Staff's Post-Hearing Requests for Information.

costs of filing and prosecuting such a case could easily outweigh any temporary benefit resulting from the change in methodologies occurring outside of a base rate case.[27]

Moreover, when Big Rivers files for emergency rate relief, it will have to seek to recover the $19 million per year in Wilson operating costs that are not currently in base rates, the $20 million per year in depreciation expense for the Wilson generating plant that is not currently in base rates, the depreciation expense on Wilson that Big Rivers has been deferring since its last rate case, and increases in expenses that have occurred since Big Rivers' last rate case in 2013.[28] Forcing Big Rivers to change methodologies outside of a base rate case will thus result in Big Rivers having no choice to file a base rate case that will result in increases in Big Rivers' base rates that will harm Big Rivers' Members and their retail ratepayers.[29]

Not only would requiring a change in the fuel cost allocation methodology without also making a corresponding change in Big Rivers' base rates be unreasonable because it would harm Big Rivers' Members, it would also be unreasonable because it would violate the matching principle, which is a long-standing ratemaking principle designed to ensure that a utility's rates are not increased or decreased by a change in a single cost or revenue component without consideration of that change's effect on other cost and revenue components.[30] As Ms. Durbin explained in her rebuttal testimony:

> The Commission's FAC regulation can operate as a stand-alone rate making procedure, allowing the Commission to make certain changes in a utility's FAC charges without impacting base rates, but in a way that is consistent with the matching principle. For example, because some of the fuel costs themselves are excluded from the calculation of base rates, the Commission can disallow unreasonable fuel costs without impacting the determination of base rates. Thus, disallowing unreasonable fuel costs would not create a mismatch between the

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[27] Rebuttal Testimony of Lindsay N. Durbin at p. 16, l. 12-22; Durbin Hearing Testimony, Tr. 2:09'45".
[28] *See* Durbin Hearing Testimony, Tr. 1:57'28"; *id.* Tr. 2:17'22' – 2:18;40"; Big Rivers' response to Item 1 of the Commission Staff's Post-Hearing Request for Information.
[29] Durbin Hearing Testimony, Tr. 1:57'28".
[30] Rebuttal Testimony of Lindsay N. Durbin at p. 17, l. 19 through p. 18, l. 3.

revenues and costs used in the determination of base rates, thereby not violating the matching principle.

On the other hand, changing the methodology used in allocating costs for purposes of calculating FAC charges does not just impact FAC charges; it also impacts the base rate calculation. Changing the allocation methodology affects the amount of costs allocated to off-system sales and would change the off-system sales margins used in the determination of base rates. As such, changing the allocation methodology only for purposes of the FAC without making a corresponding change in base rates would violate the matching principle by creating a mismatch between the fuel costs used in determining the FAC and the fuel costs (and corresponding revenues) used in determining base rates.

Thus, because Big Rivers' fuel cost allocation methodology affects not only FAC charges but also the calculation of Big Rivers' base rates, the matching principle requires that any changes to that methodology be considered in the context of Big Rivers' overall financial circumstances in a base rate case, including whether Big Rivers' rates are still fair, just and reasonable with such a change.[31]

Big Rivers should be allowed to continue to use its current methodology until its next base rate case, and forcing Big Rivers to change methodologies outside of a general rate case would be unreasonable because it would both harm Big Rivers' Members and violate the matching principle.

V. IF THE COMMISSION FORCES BIG RIVERS TO IMMEDIATELY SWITCH TO MR. KOLLEN'S PREFFERED ALLOCATION METHDOLOGY, THE COMMISSION SHOULD NEVERTHLESS DENY KIUC'S REQUEST FOR A REFUND WITH INTEREST

Mr. Kollen recommends the Commission disallow $770,174 in FAC charges and order Big Rivers to refund that amount, plus interest. As noted above, the Commission has approved Big Rivers' use of system average fuel costs in allocating fuel costs for purposes of calculating FAC charges in past FAC review proceedings. If the Commission requires a change in Big

[31] *Id.* at p. 18, l. 4 through p. 19, l. 6.

Rivers' fuel cost allocation methodology outside of a rate case, it should do so only prospectively because ordering a refund would be unreasonable and arbitrary.[32]

Additionally, the Commission has no authority to award interest on FAC refunds.[33]

VI. MR. KOLLEN'S REFUND CALCULATION VIOLATES THE AMENDED STIPULATION APPROVED BY THE COMMISSION IN CASE NOS. 2014-00230 AND 2011-00455

The Commission instituted Case No. 2014-00230, a six-month review of Big Rivers' FAC, on August 13, 2014, and Case No. 2014-00455, a two-year review of Big Rivers' FAC, on February 5, 2015. The Commission consolidated those cases by order dated February 19, 2015. KIUC and the Office of the Attorney General (the "AG") intervened in those cases and argued that Big Rivers' fuel cost allocation methodology was improper. The parties ultimately reached a settlement that was incorporated into a Stipulation and Recommendation (the "Stipulation") that was approved by order of the Commission dated July 27, 2015, in the consolidated proceedings.[34]

In the Stipulation, Big Rivers agreed that, despite its continued belief that its allocation methodology was reasonable and that requiring it to change to a stacking methodology outside of a base rate case was unreasonable, it was nevertheless in a position that would allow it to allocate some margins it had earned to its Members. The margins were to be provided to the Members through up to 15 monthly FAC credits of $311,111.11 each, beginning with the August 2015 service month and ending with the October 2016 service month. Big Rivers also agreed to propose switching its allocation methodology to a stacking methodology in its next base rate

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[32] *Id.* at p. 20, l. 10-14.

[33] *See Com., ex rel. Stumbo v. Kentucky Pub. Serv. Comm'n*, 243 S.W.3d 374, 378 (Ky. App. 2007) (the Commission "is a creature of statute. Therefore, it 'has only such powers as granted by the General Assembly'") (citations omitted).

[34] Rebuttal Testimony of Lindsay N. Durbin at p. 3, l. 9 through p. 4, l. 6.

proceeding. In consideration, KIUC and the AG agreed to forgo any challenge to Big Rivers' FAC methodology through November 1, 2016.[35]

The Stipulation was subject to the approval of the Rural Utilities Service ("RUS"), an agency of the United States Department of Agriculture. RUS' review of the Stipulation took longer than anticipated, which caused the FAC credits to be delayed by three months. As a result, the parties entered into an amendment to the Stipulation (the "Amended Stipulation"), which extended the FAC credits through the January 2017 service month and which extended KIUC's and the AG's agreement to forgo any challenge to Big Rivers' FAC methodology through February 1, 2017. More specifically, KIUC and the AG agreed in the Amended Stipulation that they would not "contest, seek a change in, or oppose the manner in which Big Rivers allocates FAC costs between native load and off-system sales in any Commission proceeding initiated prior to February 1, 2017, or for any FAC review period prior to February 1, 2017." The Amended Stipulation was approved by the Commission by order dated September 28, 2016, in Case No. 2016-00286, and was implemented according to its terms.[36]

Mr. Kollen's calculation of his recommended refund amount includes the expense months of January 2017 through April 2017. Thus, KIUC is in violation of the Amended Stipulation by requesting a refund for January 2017, and KIUC's request for a refund for January 2017 should be stricken from the record and/or denied.[37]

VII. CONCLUSION

For the foregoing reasons, the Commission should find that Big Rivers' current fuel cost allocation methodology is reasonable and that Big Rivers should be allowed to continue to utilize

[35] *Id.* at p. 4, l. 6-20.
[36] *Id.* at p. 5, l. 1-12, and p. 22, l. 19 through p. 23, l. 6, *quoting* Amended Stipulation § 2. A copy of the Amended Stipulation is attached hereto.
[37] Rebuttal Testimony of Lindsay N. Durbin at p. 22, l. 19 through p. 23, l. 6.

that allocation methodology until Big Rivers files its next base rate case, where Big Rivers has committed to proposing to switch to a stacking methodology. In that next base rate case, the Commission will be able to review Big Rivers' proposed allocation methodology within the context of Big Rivers' overall financial condition to ensure that the effects of a change in allocation methodologies are properly accounted for and that Big Rivers' rates are fair, just, and reasonable. However, if the Commission finds that Big Rivers must immediately switch to Mr. Kollen's preferred allocation methodology, the Commission should not order a refund because Big Rivers was utilizing a Commission-approved allocation methodology. Additionally, any refund should not include amounts for the January 2017 expense month because to do otherwise would not only allow KIUC to violate the Amended Stipulation, it would reward KIUC for doing so.

On this the 13th day of November, 2017.

Respectfully submitted,

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In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995, Order, Case No. 94-458-A (June 19, 1996)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM NOVEMBER 1, 1994 TO APRIL 30, 1995	)))))	CASE NO. 94-458-A

O R D E R

This case involves a review of the operation of the fuel adjustment clause ("FAC") of Big Rivers Electric Corporation ("Big Rivers") for the six-month period ending April 30, 1995.[1] Based upon its review, the Commission finds that Big Rivers (1) properly determined the fuel costs charged to its native load customers; (2) properly allocated fuel cost refunds; (3) incorrectly calculated and applied prospective disallowances of fuel charges incurred under Contract No. 527; and (4) charged $414,966 of unreasonable fuel costs to its native load customers during the review period because of its incorrect calculations.[2]

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1 Commission Regulation 807 KAR 5:056, Section 1(12), requires the Commission to conduct public hearings on a utility's past fuel adjustments at six (6) month intervals. It further requires the Commission to order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments which it finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

2 Kentucky Industrial Utility Customers ("KIUC") and the Attorney General intervened in this proceeding. On October 31, 1995, the Commission held a public hearing in this matter. On January 8, 1996, after the submission of post-hearing briefs, this matter stood submitted for decision.

Fuel Cost Determination

Kentucky Industrial Utility Customers ("KIUC") contends that Big Rivers' methods for fuel cost allocation and for plant dispatching are unreasonable. To remedy this situation, it proposes that Big Rivers assign system average fuel costs to all sales. With this pricing methodology, KIUC contends, all customers will be treated in the same manner. Its proposed allocation method is somewhat similar to the methodology Big Rivers used during most of the review period when it experienced problems with its new energy management system.[3]

The record fails to support KIUC's contentions. Big Rivers uses system average fuel cost to allocate fuel costs among its native load customers and firm off-system customers. It uses incremental costs,[4] however, to allocate fuel costs to non-firm off-system sales.

Given the nature of non-firm, off-system sales, this method is reasonable. Non-firm off-system sales are "sales of energy made using power sources that at the time of delivery are not being fully used, with such energy being used by the receiver to reduce generation

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[3] Because of problems with its Energy Management System, Big Rivers used daily average fuel costs as a proxy for incremental costs to calculate fuel costs for non-firm, off-system sales.

[4] "Incremental cost" is defined as:

> The additional costs incurred from the production or delivery of an additional unit of utility service, usually the minimum capacity or production that can be added. The additional cost divided by the additional capacity or output is defined as the incremental cost.

P.U.R. Glossary For Utility Management 75 (Public Utilities Reports, Inc. 1992) of more expensive operating units, or to avoid curtailing deliveries to secondary or interruptible customers." P.U.R. Glossary For Utility Management 46 (Public Utilities Reports, Inc. 1992). The selling utility is under no legal or contractual obligation to make the sale for any period of time. The selling price is the "market price" which the bulk power market establishes and which is based upon the seller's marginal or incremental cost.

The Commission further finds that, given the terms of its coal supply contracts for the Wilson and Green Generating Stations, Big Rivers' dispatching methods are not unreasonable. These contracts require the purchase of baseload quantities of fuel regardless of whether the coal is used.[5] Big Rivers therefore dispatches these plants - its most expensive units - before dispatching its lower cost units. Native load customers thus pay the higher costs, while non-firm off-system customers are charged the lower incremental fuel costs. Because of those contracts' take-or-pay provisions, however, the incremental cost of burning their coal is zero. Burning fuel at another plant results in a higher incremental cost since Big Rivers incurs not only the cost of the take-or-pay coal but the cost of any replacement coal. While the Commission has reviewed Big Rivers' decisions to contract for these baseload quantities on several occasions,[6] it has yet to find

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5 Contract No. 527 requires Big Rivers to take 1,020,000 tons annually for the Wilson Plant. Contract No. 865 requires Big Rivers to take an additional 240,000 tons for use at the Wilson Plant. Contract No. 246 requires Big Rivers to take an annual minimum delivery of 850,000 tons for the Green Plant. Contract No. 528 requires Big RIvers to take an additional 388,800 tons annually for the Green Plant.

6 See, e.g., Case No. 90-360-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1991 to April 30, 1992 (July 21, 1994) at 10 and 19.

these decisions to be unreasonable. Nothing within the record of this proceeding disturbs those decisions.

Line Loss Allocation

KIUC's witness alleges that Big Rivers is not including line loss in the fuel costs for non-firm off-system sales in violation of Commission Regulation 807 KAR 5:056. He further argues that this action is unreasonable and is the principal reason that non-firm, off-system customers are allocated a lower fuel cost than jurisdictional native load customers.

The record fails to support these contentions. To the contrary, it shows that, as a general policy, Big Rivers charges line losses to non-firm off-system sales. During the period when its Energy Management System was not operating, it assigned average costs, which exceeded incremental fuel costs plus line loss, to such sales.

Big Rivers' Recovery Request

In its reply brief, Big Rivers requests authority to assess an additional $544,481 in fuel charges to jurisdictional customers through its FAC.[7] Its request is based upon calculations conducted five months after the review period's close which show that using incremental cost to allocate fuel costs would reduce the level of fuel costs allocated to non-firm off-system sales by $544,481.[8] Stated another way, Big Rivers believes that native load customers were undercharged for the cost of fuel provided.

The Commission denies this request for three reasons. First, Big Rivers has failed to show that the daily average cost methodology it employed is unreasonable. In its

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[7] Reply Brief of Big Rivers at 10.

[8] Big Rivers' Response to KIUC's Data Request, Item No. 7.

previous review of Big Rivers' FAC,[9] the Commission implicitly found that, when Big Rivers experienced problems with its Energy Management System, its use of average daily cost as a substitute for incremental cost pricing was reasonable. Big Rivers has introduced no evidence to disturb this finding.

Second, the Commission will not permit Big Rivers to game the process. Big Rivers chose to assign average costs to non-firm, off-system sales as a proxy for incremental costs to ensure that native load customers paid fuel charges no greater than those that would have been charged had the utility's Energy Management System been operational. Given its dispatching constraints, Big Rivers knew that the use of average cost pricing for non-firm, off-system sales would result in lower fuel costs for native load customers. Having made its decision, Big Rivers must face the consequences of that decision. It may not switch pricing methodologies retroactively merely because one is more profitable.

Finally, Big Rivers' request is untimely. It comes after all evidence has been heard and initial briefs submitted. No intervenor has had the opportunity to either review or respond to Big Rivers' request.

<u>Allocation of Fuel Cost Refunds</u>

KIUC contends that Big Rivers is not in compliance with the Commission's Order of July 21, 1994 in Case No. 90-360-C which required the refund of approximately $12.4 million of Contract No. 527 fuel costs which the Commission found unreasonable. KIUC argues that such refunds should be allocated between jurisdictional and non-jurisdictional

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9 Case No. 94-458, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From November 1, 1992 to October 31, 1994 (Mar. 5, 1996).

customers based upon their respective shares of the Wilson Generating Station's coal costs. It asserts that the use of incremental costs for non-firm, off-system sales prevents this allocation and recommends using average fuel costs to ensure that native load customers receive a proper share of the disallowed costs.

The Commission has previously addressed KIUC's arguments in Case No. 94-458.[10] For the same reasons as discussed in that Order, the Commission again rejects those arguments.

Calculation and Allocation of Prospective Disallowances

In Case No. 94-458,[11] the Commission found that Big Rivers' methodology for calculating prospective fuel cost disallowances[12] failed to comply with 807 KAR 5:056. It ordered Big Rivers to change its methodology for calculating such disallowances beginning with the filing of its February 1996 FAC report. The Commission also ordered Big Rivers to recognize the impact of this change in methodology for the three months (August - October 1994) that such disallowances occurred during the review period. As Big Rivers incorrectly calculated the prospective disallowance for its fuel costs for an eighteen-month period prior to February 1996, implementing the proper methodology affects this case and will affect future FAC proceedings as well.

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10 Id. at 5 - 8.

11 Id. at 9 - 11.

12 In Case No. 90-360-C, the Commission found that the current price which Big Rivers pays for coal received under Contract No. 527 "is unreasonable because of Amendment No. 1 to the contract and the 'Andalex Substitution Agreement.'" Order of July 21, 1994 at 36. It ordered that Big Rivers, when calculating its fuel cost for recovery through the FAC, reduce the price of Contract No. 527 coal to reflect cost disallowances for Amendment No. 1 and the Andalex Substitution Agreement. Id.

The effect of recognizing this change is shown in Appendix A. As shown there, for the current review period, Big Rivers assessed unreasonable fuel costs of $414,966 to its native load customers.

Pursuant to 807 KAR 5:056, the Commission may require a utility to charge off and amortize unreasonable costs by means of a temporary decrease in rates. To ensure the return of the unreasonable costs over a period of time commensurate with the period during which the costs were incurred, the Commission finds that Big Rivers should charge off and amortize the unreasonable costs of $414,966, with interest,[13] over a period of six months beginning with its FAC report for the expense month of June 1996. Big Rivers should amortize and charge off the $414,966 via a monthly credit of $69,161, plus one-sixth of the total interest, to the fuel cost calculation contained in its FAC report.

KIUC's Request for Interim Order

KIUC requests that this case be held open pending the outcome of related civil and criminal proceedings as well as the appeal of the Commission's July 21, 1994 Order in Case No. 90-360-C. It asserts that material information on Big Rivers' fuel procurement decisions and its fuel costs may come to light during this litigation. Issuance of an interim decision, KIUC further contends, would not prejudice any party and would avoid the necessity for continued appeals.

The Commission finds no merit to these arguments. KIUC's hope of discovering a "smoking gun" in those other proceedings is not a sufficient basis for continuing this

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13 Interest should be based on the average of the Three-Month Commercial Paper Rate as reported in the Federal Reserve Bulletin and the Federal Reserve Statistical Release for the period November 1, 1994 to April 30, 1995. In all other respects the calculation of interest should follow the method prescribed in Case No. 90-360-C.

proceeding. For the last four years, various public agencies have scrutinized Big Rivers' fuel procurement practices. Very few areas, none of which are within the Commission's jurisdiction, remain unexplored. Concluding this proceeding best serves the public interest.

Summary

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that during the review period Big Rivers passed through its FAC to its jurisdictional customers unreasonable fuel charges of $414,966.

IT IS THEREFORE ORDERED that, beginning with the month of June 1996 and continuing for the following five months, Big Rivers shall credit $69,161 plus interest to the jurisdictional fuel cost included in its FAC report as filed with the Commission

Done at Frankfort, Kentucky, this 19th day of June, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE COMMISSION IN CASE NO. 94-458-A DATED JUNE 19, 1996.

IMPACT OF IMPLEMENTING THE PROSPECTIVE DISALLOWANCE ORDERED FOR COAL PURCHASED UNDER CONTRACT 527 BY ADJUSTING THE COST OF PURCHASES MADE UNDER CONTRACT 527 AND REFLECTING THE ADJUSTMENTS MONTHLY IN THE WILSON INVENTORY

NOVEMBER 1994 - Total Amount of Prospective Disallowance per Big Rivers' FAC Report = $642,367
Jurisdictional Component = $514,536

Wilson Inventory – November 1994 – Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	206,674	7,251,600	$35.0871
Purchases (As Recorded)	115,187	4,083,734	35.4529
Adjustments	36,534		
Sub-total (As Recorded)	358,395	11,335,334	31.6280
Less: Amount Burned	107,690	3,406,025	31.6280
Ending Inventory	250,705	7,929,309	31.6280

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	206,674	6,431,160[1]	$31.1174
Purchases (Adj)	115,187	3,441,367[2]	29.8761
Adjustments	36,534		
Sub-total (Adj)	358,395	9,872,537	27.6264
Amount Burned (Adj)	107,690	2,975,084	27.6264
Ending Inventory (Adj)	250,705	6,897,443	27.6264

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	$3,406,025
Less: Adjusted Amount Burned	2,975,084
Change in the Amount Burned	$ (430,941)
Less: Jurisdictional Disallowance Reported by BREC	514,536
Increase (Decrease) in Fuel Cost	$ 83,595

1 Reflects the impact of the August-October 1994 inventory adjustments.

2 Reflects the total November disallowance of $642,367.

DECEMBER 1994 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $598,532
Jurisdictional Component = $521,321

Wilson Inventory - December 1994 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	250,705	7,929,309	$31.6280
Purchases (As Recorded)	108,703	3,810,717	35.0565
Sub-total (As Recorded)	359,408	11,740,045	32.6650
Less: Amount Burned	84,399	2,756,887	32.6650
Ending Inventory	275,009	8,983,157	32.6650

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	250,705	6,897,443[3]	$27.6264
Purchases (Adj)	108,703	3,212,185[4]	29.5501
Sub-total (Adj)	359,408	10,109,628	28.1286
Amount Burned (Adj)	84,399	2,374,022	28.1286
Ending Inventory (Adj)	275,009	7,735,606	28.1286

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	$2,756,887
Less: Adjusted Amount Burned	2,374,022
Change in the Amount Burned	$ (382,865)
Less: Jurisdictional Disallowance Reported by BREC	521,321
Increase (Decrease) in Fuel Cost	$ 138,456

3 Reflects the impact of the August-November 1994 inventory adjustments.

4 Reflects total December disallowance of $598,532.

JANUARY 1995 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $616,741
Jurisdictional Component = $515,596

Wilson Inventory - January 1995 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	275,009	$8,983,157	$32.6650
Purchases (As Recorded)	111,711	4,002,779	35.8314
Sub-total (As Recorded)	386,720	12,985,936	33.5797
Less: Amount Burned	121,162	4,068,602	33.5797
Ending Inventory	265,558	8,917,334	33.5798

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	275,009	$7,735,606[5]	$28.1286
Purchases (Adj)	111,711	3,366,038[6]	29.5396
Sub-total (Adj)	323,083	10,053,509	28.7589
Amount Burned (Adj)	121,162	3,484,486	28.7589
Ending Inventory (Adj)	265,558	7,637,158	28.7589

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	$4,068,602
Less: Adjusted Amount Burned	3,484,486
Change in the Amount Burned	$ (584,116)
Less: Jurisdictional Disallowance Reported by BREC	515,596
Increase (Decrease) in Fuel Cost	$ (68,520)

5 Reflects the impact of the August-December 1994 inventory adjustments

6 Reflects the total January disallowance of $616,741.

FEBRUARY 1995 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $517,369
Jurisdictional Component = $423,725

Wilson Inventory - February 1995 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	265,558	$8,917,334	$33.5796
Purchases (As Recorded)	97,799	3,395,469	34.7187
Sub-total (As Recorded)	363,357	12,312,803	33.8862
Less: Amount Burned	116,636	3,952,351	33.8862
Ending Inventory	246,721	8,360,452	33.8862

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	265,558	$7,637,158[7]	$28.7589
Purchases (Adj)	97,799	2,878,101[8]	29.4287
Sub-total (Adj)	363,357	10,515,259	28.9392
Amount Burned (Adj)	116,636	3,375,352	28.9392
Ending Inventory (Adj)	246,721	7,139,907	28.9392

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	$3,952,351
Less: Adjusted Amount Burned	3,375,352
Change in the Amount Burned	$ (576,999)
Less: Jurisdictional Disallowance Reported by BREC	423,725
Increase (Decrease) in Fuel Cost	$ (153,274)

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7 Reflects the impact of the August 1994 - January 1995 inventory adjustments

8 Reflects the total February disallowance of $517,369.

MARCH 1995 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $519,703
Jurisdictional Component = $383,021

Wilson Inventory - March 1995 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	246,721	$8,360,452	$33.8862
Purchases (As Recorded)	98,032	3,430,156	34.9903
Sub-total (As Recorded)	344,753	11,790,608	34.2002
Less: Amount Burned	127,688	4,366,950	34.2002
Ending Inventory	217,065	7,423,658	34.2002

Contract 527 Disallowance Per Weighted Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	246,721	$7,139,907[9]	$28.9392
Purchases (Adj)	98,032	2,910,453[10]	29.6888
Sub-total (Adj)	344,753	10,050,360	29.1523
Less: Amount Burned	127,688	3,722,405	29.1523
Ending Inventory	217,065	6,327,955	29.1523

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	$4,366,950
Less: Adjusted Amount Burned	3,722,405
Change in the Amount Burned	$ (644,545)
Less: Jurisdictional Disallowance Reported by BREC	383,021
Increase (Decrease) in Fuel Cost	$ (261,524)

9 Reflects the impact of August 1994 - February 1995 inventory adjustments

10 Reflects the total March disallowance of $519,703.

APRIL 1995 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $619,998
Jurisdictional Component = $415,399

Wilson Inventory - April 1995 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	217,065	$7,423,658	$34.2002
Purchases (As Recorded)	113,813	3,999,986	35.1452
Sub-total (As Recorded)	330,878	11,423,644	34.5252
Less: Amount Burned	109,804	3,791,012	34.5252
Ending Inventory	221,074	7,632,632	34.5252

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	217,065	$6,327,955[11]	$29.1523
Purchases (Adj)	113,813	3,379,988[12]	29.6977
Sub-total (Adj)	330,878	9,707,943	29.3399
Less: Amount Burned	109,804	3,221,644	29.3399
Ending Inventory	221,074	6,486,299	29.3399

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	$3,791,012
Less: Adjusted Amount Burned	3,221,644
Change in the Amount Burned	$ (569,368)
Less: Jurisdictional Disallowance Reported by BREC	415,399
Increase (Decrease) in Fuel Cost	$ (153,969)

11 Reflects the impact of the August 1994 - March 1995 inventory adjustments

12 Reflects the total April disallowance of $619,998.

In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1992 to October 31, 1994, Order, Case No. 94-458 (March 5, 1996)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF BIG RIVERS ELECTRIC CORPORATION FROM NOVEMBER 1, 1992 TO OCTOBER 31, 1994	)))))	CASE NO. 94-458

O R D E R

This case involves a review of the operation of the fuel adjustment clause ("FAC") of Big Rivers Electric Corporation ("Big Rivers") for the two year period ending October 31, 1994.[1] Based upon its review, the Commission finds that: (1) Big Rivers properly determined fuel costs charged to native load customers and properly allocated mandated fuel cost refunds; (2) Big Rivers improperly calculated and applied mandated prospective fuel cost disallowances; (3) the base fuel cost in Big Rivers' rates should be adjusted as proposed; and (4) Big Rivers should refund an additional $993,129 in net unreasonable costs incurred during the review period.

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1 Commission Regulation 807 KAR 5:056, Section 1(12) provides that "[e]very two (2) years following the initial effective date of each utility's fuel adjustment clause the commission in a public hearing will review and evaluate past operations of the clause, disallow improper expenses and to the extent appropriate reestablish the fuel clause charge in accordance with subsection (2) of this section."

FUEL COST ALLOCATION

Big Rivers uses its system average fuel cost to allocate fuel costs among its native load customers and firm off-system customers. It uses incremental costs,[2] however, to allocate fuel costs to non-firm off-system sales.[3] During the review period, Big Rivers' incremental costs for the period under review were less than its system average fuel cost. Big Rivers' native load customers thus paid a higher share of fuel costs than non-firm off-system customers.

This situation is the result of the coal supply contracts for the Wilson and Green generating plants. These high volume take-or-pay contracts require the purchase of baseload quantities of fuel

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[2] "Incremental cost" is defined as:

> The additional costs incurred from the production or delivery of an additional unit of utility service, usually the minimum capacity or production that can be added. The additional cost divided by the additional capacity or output is defined as the incremental cost.

<u>P.U.R. Glossary For Utility Management</u> 75 (Public Utilities Reports, Inc. 1992).

[3] Non-firm off-system sales are sales of energy made using power sources that at the time of delivery are not being fully used, with such energy being used by the receiver to reduce generation of more expensive operating units, or to avoid curtailing deliveries to secondary or interruptible customers. The selling utility is under no legal or contractual obligation to make the sale for any period of time. <u>Id.</u> at 46.

regardless of whether the coal is used.[4] Big Rivers therefore dispatches these plants - its most expensive plants - before dispatching its lower cost plants. Native load customers thus pay the higher baseload costs, while non-firm off-system customers are charged the lower incremental fuel costs.

Kentucky Industrial Utility Customers ("KIUC") contends that this method is contrary to normal economic dispatch procedures and is unreasonable. To remedy this situation, it proposes that Big Rivers assign its system average fuel costs to all sales. In this manner non-firm off-system customers would be treated in the same manner as native load and firm off-system customers. KIUC's proposed allocation method is similar to the methodology which Big Rivers employed during portions of the review period when it experienced problems with its new energy management system.

Nonetheless, the Commission finds no merit to KIUC's contentions. The use of incremental fuel costs for non-firm off-system sales is reasonable. Such sales are "opportunity sales" in which the "market price" established by the bulk power market is based upon a utility's marginal or incremental cost.

Given the terms of its coal supply contracts for the Wilson and Green generating plants, Big Rivers' dispatching methods are

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[4] Contract No. 527 requires Big Rivers to take 1,020,000 tons annually for the Wilson Plant. Contract No. 865 requires Big Rivers to take an additional 240,000 tons for use at the Wilson Plant. Contract No. 246 requires Big Rivers to take an annual minimum delivery of 850,000 tons for the Green Plant. Contract No. 528 requires Big Rivers to take an additional 388,800 tons annually for the Green Plant.

not unreasonable. Because of those contracts' take-or-pay provisions, the incremental cost of burning their coal is zero. Burning fuel at another plant, however, results in a higher incremental cost as Big Rivers would incur not only the cost of the take-or-pay coal but also the cost of any replacement coal. While the Commission has reviewed on several occasions Big Rivers' decisions to contract for these baseload quantities,[5] it has not found the baseload quantities to be the result of unreasonable fuel procurement decisions.

LINE LOSS ALLOCATION TO OFF-SYSTEM SALES

At the hearing KIUC's witnesses alleged that Big Rivers is not including line losses in the fuel costs of non-firm off-system sales in violation of Commission Regulation 807 KAR 5:056. They argue that this action is unreasonable and is the principal reason that non-firm off-system customers are allocated a lower fuel cost than jurisdictional native load customers.

The record fails to support these contentions. Both KIUC witnesses concede a lack of knowledge about Big Rivers' current allocation practices on this point.[6] Moreover, Big Rivers'

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5 See, eg., Case No. 90-360-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1991 to April 30, 1992 (July 21, 1994).

6 KIUC's witnesses either assumed that Big Rivers was not allocating line losses to off-system sales or referred to a document that purports to show what Big Rivers was doing eight years ago. KIUC presented no evidence that Big Rivers did not allocate line losses to off-system sales during the two-year review period.

responses to discovery requests support its contention that, as a general policy, it charges line losses to non-firm off-system sales. The reports of its energy management system for the review period indicate that it applied line losses to non-firm off-system sales.

ALLOCATION OF REFUNDS

KIUC argues that Big Rivers is not complying with the Commission's Order in Case No. 90-360-C[7] which disallowed approximately $12.4 million in Contract No. 527 fuel costs that were found unreasonable. First, it contends that these refunds should be allocated between jurisdictional and non-jurisdictional customers based upon their respective share of the Wilson unit's coal costs. Big Rivers' use of incremental costs for non-firm off-system sales, KIUC asserts, prevents this allocation. In lieu of this incremental cost methodology, KIUC proposes that the Commission require the use of an average cost methodology to ensure that jurisdictional customers receive their proper share of the disallowed costs.

KIUC also argues that Big Rivers' refund method prevents jurisdictional ratepayers from receiving the total amount due them. The supplemental sales agreements between Big Rivers and NSA, Inc. and Alcan Aluminum establish minimum price "floors" for certain energy purchases. These "floors" prevent the full FAC credit for

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[7] Case No. 90-360-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1991 to April 30, 1992 (July 21, 1994).

disallowed fuel costs from being applied to these kilowatt-hour ("KWH") sales. As a result, Big Rivers retained approximately $154,000 of disallowed costs during the last three months of the review period. To ensure return of the full jurisdictional amount, KIUC argues, changes in the method for calculating the FAC refund credit should be made.

The Commission finds no merit in KIUC's first argument. The Order of July 21, 1994 did not require retroactive matching of the Contract No. 527 cost disallowances with the customer groups that receive their power from the Wilson plant. To determine the jurisdictional portion of the unreasonable fuel costs, the Commission applied the ratio of jurisdictional fuel costs to total fuel costs for the review period to the total amount of unreasonable fuel costs.[8]

The Commission's allocation method is based on the proposition that refunds of unreasonable fuel costs should go to the customers assessed those costs.[9] It is not based upon the assumption that jurisdictional and non-jurisdictional customers share proportionately in the fuel costs of the Wilson plant as alleged by

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8 81.9 percent x $13.186 million = $10.8 million.

9 The following factors influenced the choice of an allocation method: (1) the lack of any proposals on jurisdictional allocations; (2) the inability of Big Rivers' energy management systems to track precisely fuel costs from a particular generating plant to a particular customer group; and (3) the retrospective disallowances involved two coal contracts which supplied different generating units.

KIUC. If such an assumption were correct, then it logically follows that the same proportionate sharing applies to all generating units and that all customers are charged the system average fuel cost. Therefore, there would be no reason to affect a jurisdictional split. The allocation between jurisdictional and non-jurisdictional customers could then be based on KWH sales rather than fuel costs.

The Commission's jurisdictional split explicitly recognizes that jurisdictional customers incurred a proportionately higher share of fuel costs due to Contract No. 527. While this approach does not result in a precise matching of fuel costs by plant and customer group, it reflects the differences in jurisdictional and non-jurisdictional fuel costs resulting from a utility's fuel mix, dispatching constraints, and method of pricing non-firm off-system sales.

The record fails to support KIUC's contention that non-firm off-system sales bear no Contract No. 527 fuel costs. During most of the review period, Big Rivers used daily system average fuel costs for non-firm sales. These sales included the fuel costs of all generating units. Moreover, Big Rivers' energy management system reports indicate that during the review period, Big Rivers made several off-system sales which include fuel costs exceeding both the system average cost and the monthly average fuel cost of the Green generating plant (the second highest cost generation on the system).

KIUC's effort to change the allocation method of refunds, furthermore, is an untimely attempt to modify the Commission's Order of July 21, 1994.[10] KIUC seeks retroactive changes to the allocation method prescribed in that Order. Such challenge should have been made in a petition for rehearing of the July 21, 1994 Order or in its action for review.[11] KRS 278.400; KRS 278.410. At issue in this proceeding is whether Big Rivers has complied with the July 21, 1994 Order during this review period. KIUC has not shown any failure by Big Rivers to comply nor any compelling reason to change or modify the allocation method.

As to KIUC's second argument, the supplemental sales agreements prevent a complete refund of the jurisdictional portion of unreasonable fuel charges. KIUC's proposal to correct this situation, however, clearly violates the filed rate doctrine as the supplemental sales agreements establish a floor on the fuel charges. Moreover, when entering these agreements, the two aluminum smelters were aware of the possibility of refunds of unreasonable fuel charges through the FAC proceedings and that the agreements limited the level of such refunds.

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10 KIUC attempts to obscure this challenge to the Commission's Order by focusing on the allocation of fuel costs for the current review period, primarily the month of August 1994. While refunding commenced in August 1994, the Commission based the refund allocation on the 30-month review period ending April 30, 1993. It bears no relationship to the allocation of fuel costs for the month refunds commenced.

11 Kentucky Industrial Utility Customers v. Public Service Commission, Franklin Circuit Court, Civil Action No. 94-CI-01263.

CALCULATION AND ALLOCATION OF PROSPECTIVE DISALLOWANCES

In its Order of July 21, 1994, the Commission directed that Big Rivers reduce by $6.63 per ton the price for all coal purchased under Contract No. 527 for purposes of calculating the fuel cost for recovery through its FAC. To calculate this disallowance, Big Rivers multiplies the tons purchased under Contract No. 527 by $6.63 to arrive at the total system disallowance. To obtain the jurisdictional portion of the disallowance, it then applies a factor derived from the percentage of jurisdictional fuel costs compared to total system fuel costs for the month in question. The jurisdictional disallowance is then deducted from the jurisdictional fuel cost at the bottom of the fuel cost schedule in its monthly FAC report.

KIUC contends that Big Rivers' method improperly implements the Commission's Order by calculating a jurisdictional component separate from the fuel cost schedule and deducting the result from the jurisdictional fuel cost as calculated on the schedule. It argues that the amount of the total system disallowance should be reflected in the total system "coal burned" amount shown at the top of the fuel cost schedule in the FAC report. The amount of the disallowance which shows up in the jurisdictional fuel cost would then be determined by the dispatch of the system and the resulting level of fuel costs charged to off-system sale.

Big Rivers' method is not unreasonable, but other methods exist which more accurately track prospective fuel costs. While KIUC's proposal represents a move in that direction, it ignores the requirement that "all fuel costs shall be based on weighted average inventory costing." 807 KAR 5:056, Section 1(3)(e). KIUC's proposal improperly takes the monthly tonnage purchased directly to the fuel cost schedule. The Commission finds that the more appropriate and reasonable approach is to add the monthly tonnage purchased, priced to reflect the appropriate per ton disallowance,[12] to the coal inventory for the Wilson plant, with the resulting weighted average coal cost being reflected in the cost of coal burned at that plant.[13] The impact of this change on Big Rivers' monthly FAC reports for the final three months of the review period is shown in Appendix A. The Commission finds that, beginning with its monthly FAC report for February 1996, Big Rivers should reflect the prospective disallowance in this manner.

To implement this approach, it will be necessary to recalculate Big Rivers' coal inventory balances for the 15-month period from November 1994 through January 1996 to reflect the adjusted beginning inventory balance for the month of February 1996. Using Big Rivers' monthly FAC reports and FAC back-up reports, the Commission has made the calculations through December

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12 The per ton disallowance should reflect the latest revision to the productivity index applicable to Contract No. 527.

13 The Commission envisioned this approach when it stated in its July 21, 1994 Order that "the price for all coal purchased from GRCC shall be reduced in the manner set forth in Appendix C to reflect the current impact of the disallowances for both the amendment and Substitution Agreement beginning in August 1994". Order at 36. Given the FAC regulation's requirement to use weighted average inventory costing, no other method is acceptable.

1995 and has arrived at $5,880,333, as the ending inventory balance for December 1995 which in turn becomes the beginning balance for January 1996.

CURRENT PERIOD DISALLOWANCE

In Case No. 90-360-C, the Commission determined that Big Rivers incurred unreasonable costs for coal purchased under Contract 527 for the period from November 1, 1990 to April 30, 1993 and ordered their refund.[14] The Commission further ordered Big Rivers to adjust its fuel cost for all coal purchased under Contract No. 527 after July 31, 1994. In Cases No. 92-490-B[15] and 92-490-C,[16] the Commission addressed the unreasonable fuel costs incurred from May 1, 1993 through April 30, 1994. It left the question of fuel costs for the period from May 1, 1994 through July 31, 1994 for this review.

During the three months in question Big Rivers purchased 273,482 tons of coal under Contract No. 527. Based on the methodology established in Case No. 90-360-C, the Commission finds that Big Rivers incurred $618,069 in unreasonable costs during

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[14] Order of July 21, 1994 at 12-17.

[15] Case No. 92-490-B, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 1993 to October 31, 1993.

[16] Case No. 92-490-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1993 to April 30, 1994.

these three months as a result of Amendment No. 1[17] and $1,214,260 in unreasonable costs as a result of the Substitution Agreement,[18] for a total of $1,832,329. The jurisdictional portion of the total is calculated using the ratio of jurisdictional fuel costs to total fuel costs. For the three months in question Big Rivers reported jurisdictional fuel costs of $25,527,517 and total fuel costs of $35,872,716.[19] The ratio is 71.2 percent resulting in $1,304,618 in unreasonable costs allocated to jurisdictional sales.

Pursuant to 807 KAR 5:056, the Commission may require a utility to charge off and amortize unreasonable costs by means of a temporary decrease in rates. To ensure the return of the unreasonable costs over a period of time commensurate with the period during which the costs were incurred, the Commission finds that Big Rivers should charge off and amortize the unreasonable costs of $1,304,618, with interest,[20] over a period of three months

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17 273,482 tons x $2.26 per ton = $618,069. The difference of $2.26 per ton was established in Case No. 92-490-C. See Appendix A to the Commission's Order dated November 1, 1994. This amount reflects the impact of the revised productivity index of 3.05 applicable to Contract No. 527 for calendar year 1994.

18 273,482 tons x $4.44 per ton = $1,214,260. See Appendix A to the Commission's November 1, 1994 in Case No. 92-490-C for the calculation of the $4.44 per ton.

19 This amount is based upon Big Rivers' monthly FAC reports.

20 Interest should be based on the average of the Three-Month Commercial Paper Rate as reported in the Federal Reserve Bulletin and the Federal Reserve Statistical Release for the period May 1, 1994 to July 31, 1994. In all other respects the calculation of interest should follow the method prescribed in the July 21, 1994 Order.

beginning with its FAC filing for the month of February 1996.[21] After combining this amount with the reduced fuel costs attributable to the change in calculating prospective disallowances, the Commission finds that Big Rivers should return $993,129 to its jurisdictional customers.

AMOUNT OF FUEL COSTS IN BASE RATES

Big Rivers has proposed to reduce the fuel cost component in its base rates for service provided at non-smelter delivery points from 12.9 mills to 12.62 mills per KWH.[22] It proposed that the month of September 1994 be used as the base period in arriving at the base fuel cost and the KWH components of its FAC.

After review of the supporting data for this proposal, the Commission finds that September 1994 is a representative generation month. Based on the record, Big Rivers' proposed base fuel cost of 12.62 mills per KWH for non-smelter delivery points should be effective for service rendered on and after April 1, 1996, to be reflected in bills rendered on and after May 1, 1996. The rates and charges in Appendix B are designed to reflect the transfer (roll-in) to base rates of the differential between the old base

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[21] This amount should be offset with the $311,489 in increased fuel costs which results from changing the method used to recognize the prospective disallowances ordered by the Commission in Case No. 90-360-C.

[22] The base fuel cost included in rates for service provided at smelter delivery points was set at 12.95 mills per KWH in the settlement of Case No. 89-376, to remain at that level until September 1, 1997.

cost of 12.9 mills and the new base fuel cost of 12.62 mills per KWH.

SUMMARY

After reviewing the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. Beginning with the month of February 1996 and continuing each month thereafter for the next two months, Big Rivers shall credit $331,043 plus interest to the jurisdictional fuel cost included in its FAC report as filed with the Commission.

2. Beginning with the month of February 1996, Big Rivers shall, for FAC reporting purposes, reflect the prospective disallowance stemming from Amendment No. 1 and the "Andalex Substitution Agreement" to Contract No. 527 by deducting the per ton disallowance from the cost of the coal purchased prior to the purchases being added to the coal inventory for the Wilson plant.

3. The base fuel cost included in rates for Big Rivers' non-smelter delivery points shall be reduced to 12.62 mills per KWH effective for service rendered on and after April 1, 1996.

4. The rates and charges in Appendix A are fair, just, and reasonable and are approved for service rendered on and after April 1, 1996.

5. Within 20 days of the date of this Order, Big Rivers shall file with this Commission revised tariffs setting out the rates approved herein.

Done at Frankfort, Kentucky, this 5th day of March, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Ed J Holmes
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 94-458 DATED MARCH 5, 1996.

IMPACT OF IMPLEMENTING THE PROSPECTIVE DISALLOWANCE ORDERED FOR COAL PURCHASED UNDER CONTRACT 527 BY ADJUSTING THE COST OF PURCHASES MADE UNDER CONTRACT 527 AND REFLECTING THE ADJUSTMENTS MONTHLY IN THE WILSON INVENTORY

AUGUST 1994 - Total Amount of Prospective Disallowance per Big Rivers' FAC Report = $609,390
Jurisdictional Component = $428,401

Wilson Inventory – August 1994 – Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	226,940	7,959,672	$35.0740
Purchases (As Recorded)	110,459	3,875,496	35.0853
Sub-total (As Recorded)	337,399	11,835,168	35.0777
Less: Amount Burned	123,499	4,332,060	35.0777
Ending Inventory	213,900	7,503,108	35.0777

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	226,940	7,959,672	$35.0740
Purchases (Adj)	110,459	3,266,106[1]	29.5685
Sub-total (Adj)	337,399	11,225,778	33.2715
Amount Burned (Adj)	123,499	4,109,003	33.2715
Ending Inventory (Adj)	213,900	7,116,775	33.2715

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	4,332,060
Less: Adjusted Amount Burned	4,109,003
Change in the Amount Burned	(223,057)
Less: Jurisdictional Disallowance Reported by BREC	(428,401)
Increase (Decrease) in Fuel Cost	205,344

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1 Reflects total August disallowance of $609,390.

SEPTEMBER 1994 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $613,103
Jurisdictional Component = $433,464

Wilson Inventory - September 1994 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	213,900	7,503,108	$35.0777
Purchases (As Recorded)	110,804	3,883,426	35.0478
Sub-total (As Recorded)	324,704	11,386,534	35.0675
Less: Amount Burned	116,623	4,089,667	35.0675
Ending Inventory	208,081	7,296,867	35.0675

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	213,900	7,116,775[2]	$33.2715
Purchases (Adj)	110,804	3,270,323[3]	29.5145
Sub-total (Adj)	324,704	10,387,098	31.9895
Amount Burned (Adj)	116,623	3,730,701	31.9895
Ending Inventory (Adj)	208,081	6,656,397	31.9895

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	4,089,667
Less: Adjusted Amount Burned	3,730,701
Change in the Amount Burned	(358,966)
Less: Jurisdictional Disallowance Reported by BREC	(433,464)
Increase (Decrease) in Fuel Cost	74,498

2 Reflects the impact of the inventory adjustment for August 1994.

3 Reflects total September disallowance of $613,103.

OCTOBER 1994 - Total Amount of Prospective Disallowance Per Big Rivers' FAC Report = $642,090
Jurisdictional Component = $493,767

Wilson Inventory - October 1994 - Per Big Rivers' Back-up Report

	TONS	AMOUNT	PER TON
Beginning Inventory	208,081	$7,296,867	$35.0675
Purchases (As Recorded)	115,002	4,039,202	35.1227
Sub-total (As Recorded)	323,083	11,336,069	35.0872
Less: Amount Burned	116,409	4,084,469	35.0872
Ending Inventory	206,674	7,251,600	35.0872

Contract 527 Disallowance Per Weighted Average Inventory Method

	TONS	AMOUNT	PER TON
Beginning Inventory	208,081	$6,656,397[4]	$31.9895
Purchases (Adj)	115,002	3,397,112[5]	29.5396
Sub-total (Adj)	323,083	10,053,509	31.1174
Amount Burned (Adj)	116,409	3,622,349	31.1174
Ending Inventory (Adj)	206,674	6,431,160	31.1174

Impact on FAC Calculation (dollars)

Amount Burned as Reported by BREC	4,084,469
Less: Adjusted Amount Burned	3,622,349
Change in the Amount Burned	(462,120)
Less: Jurisdictional Disallowance Reported by BREC	(493,767)
Increase (Decrease) in Fuel Cost	31,647

4 Reflects the impact of the inventory adjustments for August and September 1994.

5 Reflects the total October disallowance of $642,090.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 94-458 DATED MARCH 5, 1996.

The following rates and charges are prescribed for Big Rivers Electric Corporation. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of this Commission prior to the effective date of this Order.

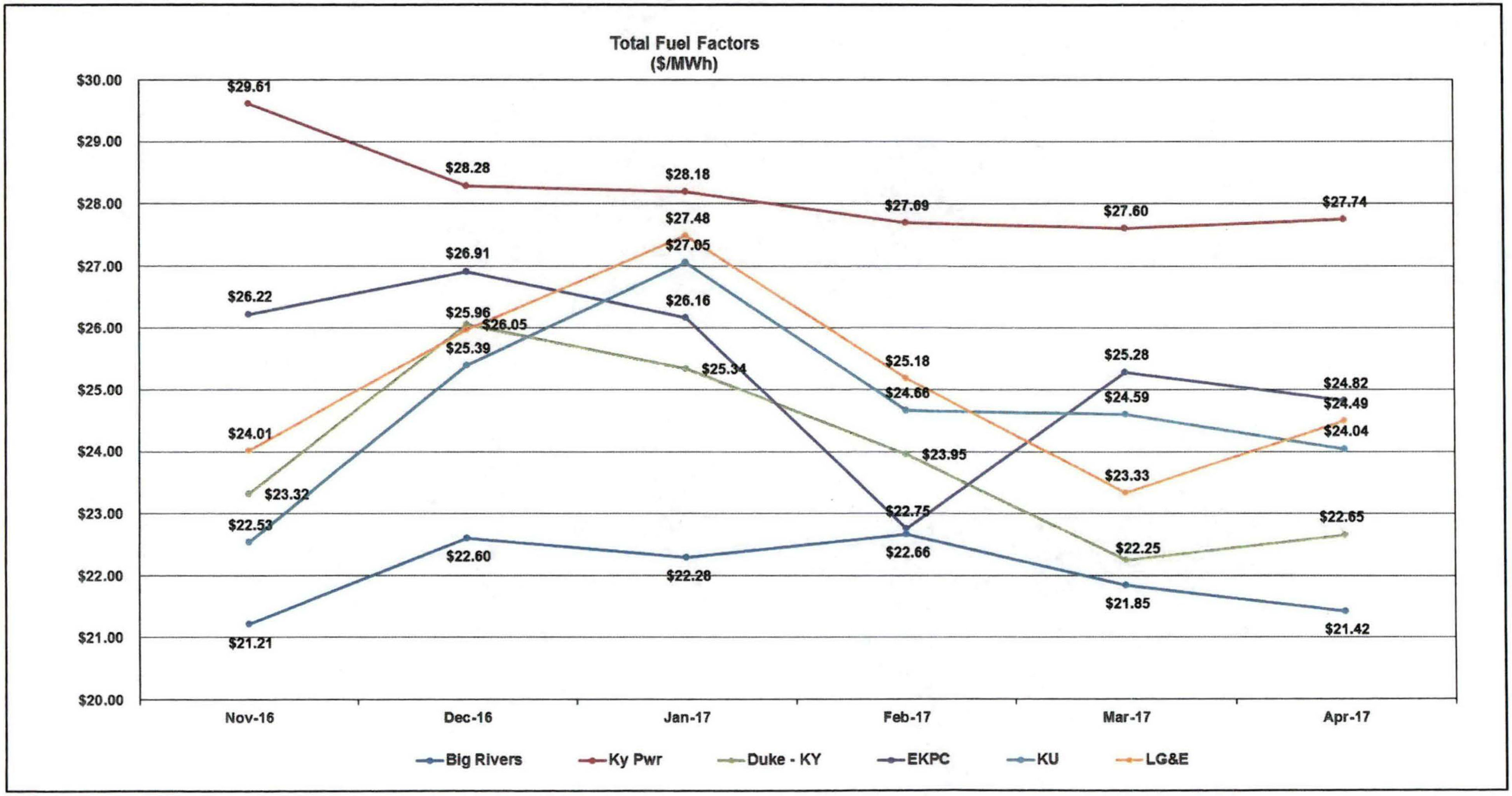
RATES

For all non-smelter delivery points:

(2) An Energy Charge of:

All KWH per month at $.0178206

Big Rivers Electric Corporation
Case No. 2017-00287



The Amended Stipulation

AMENDMENT TO STIPULATION AND RECOMMENDATION

This Amendment to Stipulation and Recommendation ("*Amendment*") is entered into this 1st day of August, 2016, by and between Big Rivers Electric Corporation ("*Big Rivers*"), the Office of the Attorney General ("*AG*"), and Kentucky Industrial Utility Customers, Inc. ("*KIUC*") (collectively, the "*Signatory Parties*") in the proceedings involving Big Rivers that are the subject of this Amendment, as set forth below:

WITNESSETH:

WHEREAS, pursuant to 807 KAR 5:056, the Kentucky Public Service Commission ("*Commission*") established Case No. 2014-00230 to review and evaluate the reasonableness of the application of Big Rivers' fuel adjustment clause ("*FAC*") for the six-month period that ended on April 30, 2014, and the Commission established Case No. 2014-00455 to review and evaluate the reasonableness of the application of Big Rivers' FAC for the two-year period that ended on October 31, 2014, and consolidated it with Case No. 2014-00230;

WHEREAS, the Commission granted the AG and KIUC full intervention in those proceedings;

WHEREAS, the Signatory Parties entered into a Stipulation and Recommendation, which was approved by the Commission by order dated July 27, 2015, and by the Rural Utilities Service ("*RUS*") on October 23, 2015;

WHEREAS, under the Stipulation and Recommendation, Big Rivers agreed to provide a monthly credit through its FAC, subject to certain limitations, beginning with the August 2015 service month;

WHEREAS, an unexpected delay in obtaining RUS approval of the Stipulation and Recommendation created uncertainty as to how the FAC credits would be issued to Big Rivers' customers; and

WHEREAS, the Signatory Parties desire to enter into this Amendment to resolve that uncertainty.

NOW, THEREFORE, for and in consideration of the premises and terms and conditions set forth herein, the Signatory Parties agree as follows:

1. Paragraph 1 of the Stipulation and Recommendation is deleted and replaced with the following paragraph:

Big Rivers will credit $311,111.11 (the "FAC Credit") each month through its FAC to its Members beginning on the wholesale invoices issued for November 2015 consumption. The FAC Credits shall cease upon the first to occur of the following:

(a) The date of the fifteenth FAC Credit;

(b) the effective date of any Commission order ordering a change in the methodology Big Rivers uses to allocate fuel costs to off-system sales for purposes of calculating FAC charges;

(c) the effective date of any Commission order ordering a refund of amounts collected through Big Rivers' FAC on the basis of the methodology Big Rivers uses to allocate fuel costs to off-system sales; and

(d) if Big Rivers voluntarily changes its FAC methodology to a stacked-cost methodology effective prior to November 1, 2016, the FAC Credits shall cease after the third monthly payment after the effective date of the change to the FAC methodology.

Any cessation of FAC Credits under (b) or (c) shall take effect beginning with the month in which that change is effective.

2. Paragraph 3 of the Stipulation and Recommendation is deleted and replaced with the following paragraph:

The AG and KIUC each agree not to contest, seek a change in, or oppose the manner in which Big Rivers allocates FAC costs between native load and off-system sales in any Commission proceeding initiated prior to February 1, 2017, or for any FAC review period prior to February 1, 2017, but shall not be prohibited in any respect from: (a) raising issues related to the manner in which Big Rivers allocates FAC costs between native load and off-system sales in FAC proceedings initiated by Commission order after February 1, 2017, for review periods after February 1, 2017, if Big Rivers has not changed its FAC calculation methodology to an hourly stacked-cost methodology; or (b) contesting the appropriateness of the changes proposed by Big Rivers to its FAC calculation methodology in the 2016 Rate Case or in any other proceeding initiated after February 1, 2017.

3. The Signatory Parties agree that the foregoing amendments and agreements represent a fair, just and reasonable resolution of the issues addressed herein, and request that the Commission approve the Amendment.

4. The Signatory Parties agree that, following the execution of this Amendment, they will cause the Amendment to be filed with the Commission together with a request that the Commission consider and approve the Amendment. The Signatory Parties agree that this Amendment is subject to the acceptance of and approval by the Commission, and they agree to act in good faith and to use their best efforts to seek the Commission's acceptance and approval of this Amendment. If the Commission approves this Amendment without modification, the

Signatory Parties each waive any right to appeal or to file an action seeking review of or to seek reconsideration of any order of the Commission issued in accordance with this Amendment.

5. The Signatory Parties agree that if the Commission does not accept and approve this Amendment in its entirety and unchanged, or if the Commission imposes conditions on its acceptance and approval that are unacceptable to Big Rivers, then:

(a) This Amendment shall be void and withdrawn by the Signatory Parties hereto from any further consideration by the Commission, and none of the Signatory Parties shall be bound by any of the provisions herein, provided that none of the Signatory Parties is precluded from advocating any position contained in this Amendment; and

(b) Neither the terms of the Amendment nor any matters raised during the negotiations of this Amendment shall be binding on any of the Signatory Parties to this Amendment or be construed against any of the Signatory Parties.

6. Subsequent to obtaining Commission approval of this Amendment, Big Rivers shall cause the tariff amendments attached hereto as Exhibit A to be filed with the Commission. The Signatory Parties recommend that the Commission allow the tariff amendments to become effective without suspension or change.

7. The Signatory Parties hereto agree that this Amendment shall inure to the benefit of and be binding upon the Signatory Parties hereto, their successors and assigns.

8. The Signatory Parties hereto agree that this Amendment constitutes the complete agreement and understanding among the Signatory Parties hereto, and any and all oral statements, representations or agreements made prior hereto or contemporaneously herewith shall be null and void and shall be deemed to have been merged into this Amendment.

9. The Signatory Parties hereto agree that, for purposes of this Amendment only, the terms of this Amendment are based upon the independent analyses of the Signatory Parties, reflect a fair, just and reasonable resolution of the issues herein, and are the product of compromise and negotiation.

10. The Amendment shall not have any precedential value in this or any other jurisdiction.

11. Counsel for KIUC warrants that he or she has informed, advised, and consulted with the KIUC members participating in these proceedings in regard to the contents and the significance of this Amendment, and based upon the foregoing, is authorized to execute this Amendment on behalf of those clients. The other Signatory Parties hereto warrant that they have informed, advised, and consulted with their respective clients in regard to the contents and the significance of this Amendment, and based upon the foregoing are authorized to execute this Amendment on behalf of those clients.

12. The Signatory Parties agree that this Amendment being a product of negotiation among all Signatory Parties, no provision of this Amendment shall be strictly construed in favor of or against any party.

13. The Signatory Parties hereto agree that this Amendment may be executed in multiple counterparts.

The Attorney General of Kentucky, by and through
his Office of the Rate Intervention Division

By:________________________________

Kentucky Industrial Utility Customers, Inc.

By:________________________________

Big Rivers Electric Corporation

By:________________________________

The Attorney General of Kentucky, by and through
his Office of the Rate Intervention Division

By:______________________________

Kentucky Industrial Utility Customers, Inc.

By: K Boehm

Big Rivers Electric Corporation

By:______________________________

The Attorney General of Kentucky, by and through
his Office of the Rate Intervention Division

By:______________________________

Kentucky Industrial Utility Customers, Inc.

By:______________________________

Big Rivers Electric Corporation

By: [signature]

P.S.C. KY.NO. 27
CANCELLING P.S.C.KY.NO. 26

Big Rivers Electric Corporation
Table of Contents

Standard Electric Rate Schedules – Terms and Conditions

Deleted: 11-12-2015

Deleted: November 12, 2015

Deleted: October 23, 2015

Deleted: *Issued by Authority of an Order of the Commission,¶ dated July 27, 2015, in Case Nos. 2014-00359 and 2014-00455*

DATE OF ISSUE
DATE EFFECTIVE

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry, President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420

Exhibit A

FAC - Fuel Adjustment Clause:

Applicability:

To all Big Rivers' Members.

Availability:

The Fuel Adjustment Clause ("FAC") is a mandatory rider to all wholesale sales by Big Rivers to its Members, including Base Energy sales to the Smelters under the Smelter Agreements but excluding Supplemental and Back-Up Energy sales to the Smelters under those two Agreements.

Rate:

The FAC shall provide for periodic adjustment per kWh of sales when the unit cost of fuel [F(m)/S(m)] is above or below the base unit cost of $0.020932 per kWh [F(b)/S(b)]. The current monthly charges shall be increased or decreased by the product of the kWh furnished during the current month and the FAC factor for the preceding month where the FAC factor is defined below:

$$\text{FAC Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where "F" is the expense of fossil fuel in the base (b) and current (m) periods; and S is sales in the base (b) and current (m) periods as defined in 807 KAR 5:056, all defined below:

Definitions:

Please see Section 4 for definitions common to all tariffs.

(1) Fuel cost (F) shall be the most recent actual monthly cost of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel which would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation, *plus*

Big Rivers
ELECTRIC CORPORATION
Your Touchstone Energy® Cooperative
(Name of Utility)

For All Territory Served By
Cooperative's Transmission System
P.S.C. KY. No. 27

Second Revised SHEET NO. 63

CANCELLING P.S.C. KY. No. 27

First Revised SHEET NO. 63

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RATES, TERMS AND CONDITIONS – SECTION 2

FAC - Fuel Adjustment Clause – (*continued*)

Definitions (*continued*):

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (c) below, but excluding the cost of fuel related to purchases to substitute the forced outages, ***plus***

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis and exclusive of energy purchases directly related to Supplemental and Back-Up Energy sales to the Smelters. Included therein may be such costs as the charges for economy energy purchased and the charges as a result of scheduled outages, also such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and ***less***

(d) The cost of fossil fuel, as denoted in (1)(a) above, recovered through inter-system sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis; and ***less*** [T]

(e) A monthly credit of $311,111.11 for each month from the November 2015 service month, through the January 2017 service month, except as follows: [T]

(i.) If the Commission orders Big Rivers to change its FAC methodology to a stacking methodology prior to February 1, 2017, or if Big Rivers is ordered to refund amounts collected through its FAC based on its allocation methodology prior to February 1, 2017, the monthly credit shall be zero.

(ii.) If Big Rivers voluntarily changes its FAC methodology to a stacking methodology effective prior to November 1, 2016, the monthly credit shall be $311,111.11 for the first three service months the change is effective, after which the monthly credit shall be zero. [N] [N] [N]

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Deleted: In all other months, the monthly credit shall be zero.¶

Deleted: All fuel costs shall be based on weighted average inventory costing.¶
¶
Forced outages are all non-scheduled losses of generation or transmission which require substitute power for a continuous period in excess of six (6) hours. Where forced outages are not a result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection or acts of public enemy, the utility may, upon proper showing, with the approval of the Commission, include the fuel cost of substitute energy in the adjustment.¶

Deleted: November 12, 2015

Deleted: October 23, 2015

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DATE OF ISSUE
DATE EFFECTIVE

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry, President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420

FAC - Fuel Adjustment Clause – (*continued*)

Definitions (*continued*):

All fuel costs shall be based on weighted average inventory costing. [T]

(2) Forced outages are all non-scheduled losses of generation or transmission which require substitute power for a continuous period in excess of six (6) hours. Where forced outages are not a result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection or acts of public enemy, the utility may, upon proper showing, with the approval of the Commission, include the fuel cost of substitute energy in the adjustment.

(3) Sales (S) shall be kWh sold, excluding inter-system sales and Supplemental and Back-Up Energy sales to the Smelters. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:

- (i) generation, ***plus***
- (ii) purchases, ***plus***
- (iii) interchange in, ***less***
- (iv) energy associated with pumped storage operations, ***less***
- (v) inter-system sales referred to in subsection (1)(d) above, ***less***
- (vi) total system losses.

Utility-used energy shall not be excluded in the determination of sales (S).

(4) The cost of fossil fuel shall include no items other than the invoice price of fuel less any cash or other discounts. The invoice price of fuel includes the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of the FERC Uniform System of Accounts for Public Utilities and Licenses.

(5) Current (m) period shall be the second month preceding the month in which the FAC factor is billed.

Deleted: November 12, 2015
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Deleted: *Issued by Authority of an Order of the Commission,*
dated July 27, 2015, in Case Nos. 2014-00230 and 2014-00455

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DATE EFFECTIVE

/s/ Robert W. Berry

ISSUED BY: Robert W. Berry,
President and Chief Executive Officer
Big Rivers Electric Corporation, 201 Third Street, Henderson, KY 42420