COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL TO MODIFY ITS MRSM TARIFF, CEASE DEFERRING DEPRECIATION EXPENSES, ESTABLISH REGULATORY ASSETS, AMORTIZE REGULATORY ASSETS, AND OTHER APPROPRIATE RELIEF	)))))))	CASE NO. 2020-00064

O R D E R

On February 28, 2020, Big Rivers Electric Corporation (BREC) filed an application, pursuant to KRS 278.040 and KRS 278.220, requesting that the Commission (1) authorize BREC to modify it Member Rate Stability Mechanism (MRSM) Tariff to provide a monthly bill credit and increased amortization of the Smelter Loss Mitigation (SLM) Regulatory Assets;[1] (2) find that the D.B. Wilson Station (Wilson Station) is "used and useful," and authorize BREC to cease deferring and begin recovering depreciation expenses; (3) authorize BREC to establish regulatory assets for the costs related to the retirement of the Kenneth C. Coleman Station (Coleman Station) and Robert A. Reid Station Unit 1 (Reid Station Unit 1); and (4) authorize BREC to recover through amortization the SLM Regulatory Assets. BREC stated that the primary purpose of the application is to restore BREC's investment grade credit ratings. BREC requested an

[1] The SLM Regulatory Assets include Station Two Retirement Costs Regulatory Asset, Wilson Station Depreciation Deferral Regulatory Asset, Coleman Station Depreciation Deferral Regulatory Asset, Coleman Station Regulatory Asset, Reid Station Unit 1 Regulatory Asset, and the Focused Management Audit expenses. BREC requests approval to establish the Coleman Station Regulatory Asset and the Reid Station Unit 1 Regulatory Asset in this proceeding.

expedited decision because it planned to issue new debt in July 2020 and would share the final Order in this proceeding with rating agencies no later than June 30, 2020.

Kentucky Industrial Utility Customers, Inc. (KIUC) and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) are intervenors in this matter. BREC responded to multiple rounds of discovery from the parties. KIUC filed testimony and responded to one round of discovery. Two informal conferences were held to discuss potential settlement by the parties.

On May 29, 2020, BREC, KIUC, and the Attorney General filed a unanimous Settlement Agreement, Stipulation, and Recommendation (Settlement) that addressed all of the issues raised in this proceeding. BREC and KIUC filed respective testimony in support of the settlement. The Settlement is attached to this Order. A hearing was held on June 9, 2020, for the purpose of hearing testimony in support of the Settlement and Commission Staff cross-examination. KIUC, BREC, and the Attorney General each filed post-hearing briefs in support of the Settlement on June 11, 2020, June 16, 2020, and June 17, 2020, respectively. The matter now stands submitted to the Commission for a decision.

BACKGROUND

BREC is a member-owned, not-for-profit generation and transmission (G&T) cooperative that provides wholesale electric power and services to its Members,[2] which provide retail electric service to approximately 118,000 customers in 22 counties in

[2] BREC's members are Jackson Purchase Energy Corporation (Jackson Purchase Energy), Kenergy Corporation (Kenergy), and Meade County Rural Electric Cooperative Corporation (Meade County RECC) (collectively, Members).

western Kentucky.[3] BREC owns 1,444 megawatts (MW) of primarily coal-fired generation.[4] The generating facilities relevant to this proceeding are (1) the Wilson Station, which consists of a single coal unit; (2) Coleman Station, which consists of three coal units that were idled in 2014; (3) Reid Station Unit 1, which has been idled since 2016; and (4) the Henderson Municipal Power & Light (HMPL&L) William L. Newman Station (Station Two) that was retired in 2019.[5] BREC is a member of the regional transmission organization Midcontinent Independent System Operator, Inc. (MISO).

This case is the culmination of BREC's efforts to mitigate the loss of 850 MW of load from two aluminum smelters in 2013–2014, which represented more one-half of BREC's total native load.[6] Due to the loss of revenue from the loss of the smelter load, three credit rating agencies reduced their ratings for BREC to below investment grade in 2013, which resulted in, among other things, increased cost for borrowing.[7] BREC is the only G&T that has issued debt in the capital market that does not have an investment grade credit rating.[8]

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[3] Application at 10.

[4] *Id.* at 12.

[5] Application at 12–15. *Also, See* Case No. 2018-00146, *Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset* (Oct. 23, 2018). Station Two, which was retired in 2019, is owned by HMP&L and operated by BREC. The Commission, among other things, approved a regulatory asset to defer BREC's share of the expenses related to the termination of the Station Two contracts.

[6] Direct Testimony of Robert W. Berry (Berry Direct Testimony) at 5:15-19.

[7] *See* Case No. 2018-00146, Robert W. Berry Supplemental Testimony at 7:11–15. The three credit rating agencies are Fitch Ratings, S&P Global Ratings, and Moody's Investor Service.

[8] Settlement Testimony of Daniel M. Walker (Walker Settlement Testimony) at 6:15–18.

Relevant to this proceeding and pursuant to a mitigation plan (Mitigation Plan) developed by BREC and a focused management audit (Focused Management Audit) ordered by the Commission, BREC pursued off-system sales and executed wholesale power purchase contracts with entities in Nebraska that run through 2026, with Owensboro Municipal Utilities that runs through 2026, and with members of the Kentucky Municipal Energy Agency (KyMEA) that run through 2029.[9] Further, BREC has a pending case before the Commission to provide electric service to Nucor Corporation's new facility in Meade County, Kentucky, that, if approved, will significantly increase BREC's native load.[10]

BREC explained that with anticipated increases in native load and successful marketing of excess capacity, its financial and credit metrics have improved considerably. In July 2018, one of the rating agencies upgraded BREC to an investment grade rating.[11] BREC maintained that it must receive an investment grade rating from a second rating agency in order to comply with its loan agreement with the U.S. Department of Agriculture Rural Utilities Service (RUS) or face financial consequence.[12] Additionally, because credit ratings implicate loan interest rates, BREC asserts that regaining investment grade rating would result in "material" savings on future borrowings.[13] For this reason, BREC

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[9] Berry Direct Testimony at 7:8–16.

[10] *Id.* at 8:3-10; *See* Case No. 2019-00365, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (filed Oct. 18, 2019).

[11] Berry Direct Testimony, Exhibit 2 at 6.

[12] Berry Direct Testimony at 26:18.

[13] *Id.* at 26:19–22.

requests approval of its application in conjunction with its efforts to obtain an investment grade rating from at least two of the three rating agencies and to return to its members the short- and long-term benefits of the expected cost savings from improved credit rating and new sources of revenue.[14]

PROPOSAL

As originally proposed, BREC sought Commission approval of the following:

Modify BREC's MRSM Tariff

BREC requested to modify the MRSM Tariff, which currently returns transmission and off-system sales revenue as well as reductions in expenses due to the retirement of Station Two, to Members, and ultimately their retail customers, through monthly bill credits.[15] Under the current MRSM Tariff, the credit is calculated based upon different revenue sources allocated using differing matrices and margins. BREC asserted that the proposed modifications would treat all net margins the same, and thus simplify and stabilize rates through a monthly bill credit, which would result in a higher bill credit and lower effective rates to Members in 2021 than under the current MRSM Tariff.[16]

For calendar years 2020 through 2043, BREC proposed to allocate all net margins above the margins that would result in a TIER of 1.30 (New TIER Credit), with 50 percent allocated to a monthly bill credit (Monthly Bill Credit) and 50 percent allocated to accelerate the amortization of the SLM Regulatory Asset balance.[17] Under the revised

[14] Application at 4–5, Berry Direct Testimony at 9:9–12.

[15] *See* MRSM Tariff, Sheet 65.

[16] Application at 91, 93.

[17] *Id.* at 94.

MRSM Tariff, the year-end TIER would be calculated annually, excluding expenditures on promotional, political, and institutional advertising pursuant to 807 KAR 5:016, lobbying costs, and donations.[18] The Monthly Bill Credit would be applied in equal monthly installments over the following twelve months.[19] The Monthly Bill Credit would be allocated to the Rural Class and the Large Industrial Class (LIC) in proportion to the revenues produced by each class during the prior calendar year, excluding revenue from sales under an economic development rider (EDR) and sales to which BREC's fuel adjustment clause (FAC) is not applicable.[20] The Monthly Bill Credit would then be applied based upon kilowatt-hour (kWh) sales within each class.[21]

The remaining 50 percent of the net margins above a 1.30 TIER would be applied to further amortize the SLM Regulatory Assets, decreasing their total balance. This proposal is described in further detail below. If the SLM Regulatory Assets are fully amortized before December 31, 2043, then 100 percent of the New TIER Credit would be applied to the Monthly Bill Credit.[22]

BREC also proposed to stop accruing the Demand Side Management (DSM) Regulatory Liability, previously approved by the Commission,[23] as of January 1, 2020,

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[18] *Id.* at 94, 99.

[19] *Id.* at 99.

[20] Direct Testimony of Paul G. Smith (Smith Direct Testimony) at 19:5–10.

[21] *Id.* at 19:11–15.

[22] *Id.* at 20:1–3.

[23] Case No. 2018-00236, *Demand-Side Management Filing of Big Rivers Electric Corporation on Behalf of Itself, Jackson Purchase Energy Corporation, and Meade County R.E.C.C. and Request to Establish a Regulatory Utility* (Ky. PSC Dec. 12, 2018) Order at ordering paragraph 7.

and use the balance to reduce the balance of the SLM Regulatory Assets. As of December 31, 2019, the DSM Regulatory Liability had a balance of $704,839.13.[24]

Wilson Station Deferred Depreciation Expense

BREC requested that the Commission find that the Wilson Station is "used and useful," authorize BREC to cease deferring depreciation expense for the Wilson Station as of December 31, 2020, and authorize BREC to collect depreciation expense for the Wilson Station as of January 1, 2021.

As background, Wilson Station lost 90 percent of its load with the loss of smelter load in 2013.[25] Because BREC expected to idle the Wilson Station, in 2014 the Commission ordered BREC to defer depreciation expense for the Wilson Station to a regulatory asset.[26] Ultimately, BREC did not idle the Wilson Station, which continues to run to serve native load and off-system sales.[27] BREC stated that the Wilson Station remains the least-cost unit and has the lowest cost for future environmental compliance.[28]

BREC contended that the Wilson Station is necessary to serve native load and for off-system sales, and thus BREC should recover costs it incurs, including depreciation expense. As of December 31, 2019, the Wilson Station Depreciation Deferral Regulatory Asset had a balance of approximately $120,500,000. If approved, BREC would stop deferring the depreciation expense for the Wilson Station as of December 31, 2020, thus

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[24] BREC's Response to Staff's Post-Hearing Request for Information (Response to Staff's First Post-Hearing Request), Item 1.

[25] Application at 33.

[26] *Id.* at 35.

[27] *Id.* at 36.

[28] *Id.*

realizing current depreciation expense. BREC also proposed to begin amortizing the Wilson Station Depreciation Deferral Regulatory Asset on January 1, 2021, as part of the SLM Regulatory Assets.

Establish Regulatory Assets for Costs to Retire Coleman Station and Reid Station Unit 1

BREC requested approval to establish regulatory assets for the costs related to the retirement of Coleman Station and Reid Station Unit 1, including their net book values. Coleman Station and Reid Station Unit 1 were idled in 2014 and 2016, respectively. BREC asserted that it was not financially viable to re-energize Coleman Station due to uneconomic pricing and the termination of MISO interconnection rights, and thus requested to retire that facility.[29] BREC further asserted that the cost to bring Reid Station Unit 1 into compliance with environmental standards was not economic, and thus requested to retire that facility.[30] Additionally, BREC proposed to stop deferring Coleman Station depreciation expense into a regulatory asset, which had been established pursuant to a Commission Order in BREC's last base rate case. Coleman Station's depreciation expense regulatory asset had a balance of approximately $37,200,000 as of December 31, 2019.[31]

BREC requested approval to establish new regulatory assets for the costs associated with retiring Coleman Station and Reid Station Unit 1, including the remaining net book value and decommissioning costs. Coleman Station had a remaining net book

[29] *Id.* at 42.

[30] *Id.* at 51.

[31] *Id.* at 44.

value of approximately $140,400,000 as of December 31, 2019.[32] However, BREC intends to remove the flue gas desulfurization (FGD) system from Coleman Station and install it at the Wilson Station, which will reduce the unrecovered net book value of Coleman Station by approximately $23,300,000 to $117,100,000.[33] BREC stated that the remaining net book value of Reid Station Unit 1 is approximately $6,000,000.[34] BREC asserted that, unless regulatory assets are established, it would have to recognize a one-time expense of approximately $117,100,000 to write off Coleman Station and $6,000,000 to write off Reid Station Unit 1, without the ability to recover those amounts through rates.[35]

BREC also requested to include the expenses associated with the physical retirement of the Coleman Station and Reid Station Unit 1, including decommissioning costs. BREC avowed that it would minimize decommissioning costs through the potential sale or use of tangible assets.[36] BREC argued that the costs to retire Coleman Station and Reid Station Unit 1 are not currently included in rates and that such expenses should be recovered in the future by establishing and amortizing regulatory assets (respectively, Coleman Station Regulatory Asset and Reid Station Unit 1 Regulatory Asset).

[32] *Id.* at 46.

[33] *Id.*

[34] *Id.* at 53.

[35] *Id.* at 46.

[36] *Id.* at 47.

BREC stated that it needs the approval of RUS and the Commission to establish a regulatory asset and that RUS provided its approval on April 13, 2020.[37]

Reduce and Amortize SLM Regulatory Assets

BREC's plan to regain investment grade rating is predicated upon reducing the SLM Regulatory Assets. In support of its plan, BREC cited to, among other things, a credit opinion by one rating agency that a rating upgrade was possible "if credit supportive regulatory treatment remains intact and there is future regulatory support for cost recovery of the increasing regulatory asset account."[38]

To that end, BREC requested approval to recover the balances of the SLM Regulatory Assets by amortizing the regulatory assets over a period no longer than through December 31, 2043, which is the date when the current all-requirements contracts between BREC and its Members expire. The balances of previously approved regulatory assets and regulatory assets for which BREC requests approval in this proceeding are as follows:[39]

Name	**Established**	**Approximate Balance as of 12/31/19**
Station Two· Retirement Costs	Case No. 2018-00146	$90.4 million
Coleman Station Depreciation Deferral	Case No. 2012-00535	$37.2 million
Wilson Station Depreciation Deferral	Case No. 2013-00199	$120.5 million
Focused Management Audit Expenses	KRS 278.255(3)	$0.7 million
Coleman Station	*Requested in this Case*	$117.1 million + Actual

[37] *Id.* at 49, 56; BREC's Supplemental Response to Commission Staff's First Request for Information (Response to Staff's First Request), Item 20.

[38] Berry Direct Testimony, Exhibit 4 at 2. *See also* Smith Settlement Testimony, Exhibit 4.

[39] Application at 63.

		Regulatory Asset Costs of Retirement, such as decommissioning costs
Reid Station Unit 1	*Requested in this Case*	$6.0 million + Actual Costs Regulatory Asset of Retirement, such as decommissioning costs

BREC proposed to record a one-time amortization of the SLM Regulatory Assets in 2021 of approximately $91,000,000, which represents 80 percent of its Member equity in excess of the amount required under BREC's loan covenants.[40] Thereafter, BREC would recover the remainder of the SLM Regulatory Assets through existing rates by amortizing each regulatory asset using a levelized annual amortization from 2021 through 2043 and through the allocation of 50 percent of the New TIER Credit.[41] In any year that the year-end TIER is below 1.30, BREC proposed the amortization expense would be reduced to bring BREC's TIER to 1.30.[42]

<u>Other Issues Raised by BREC</u>

BREC also requested that the Commission not require BREC to implement depreciation rates from its 2019 depreciation study, conducted pursuant to a previous Commission Order.[43] Implementing the 2019 depreciation study rates would reduce BREC's depreciation expenses by $90,000.[44] BREC argued that it would have to expend

[40] Application at 64-65; Berry Direct Testimony at 32:4-10; Smith Direct Testimony at 14:15-18.

[41] Application at 66–67.

[42] *Id.* at 101.

[43] *Id.* at 24, *citing* Case No. 2018-00313, *Motion of Big Rivers Electric Corporation for an Extension of Time to File a New Depreciation Study* (Ky. PSC Dec. 14, 2018).

[44] *Id.* at 25; Application, Exhibit C at 5; Smith Direct Testimony at 32:15–18.

significant time and costs to implement the 2019 depreciation study, with the costs outweighing the insignificant benefit.[45]

BREC also requested that the Commission not modify BREC's fuel allocation methodology, which allocates fuel costs between native load and off-system sales with generation stacked from lowest to highest cost each hour with lowest fuel expenses allocated to native load and the remaining fuel expense allocated to off-system sales.[46] BREC explained that it is not requesting to change its fuel cost allocation methodology because this is not a base rate case and because the remaining generation has similar dispatch costs, so any change to the methodology would make an insignificant difference.[47]

KIUC's Proposed Rate Design for Large Industrial Class

KIUC proposed a revenue-neutral revised rate design for the LIC, with certain exemptions, based upon KIUC's review of data from a 2013 BREC rate case that KIUC asserted contained significant errors that departed from the cost of service and resulted in an unreasonable rate for the LIC. KIUC's witness Steve Baron provided evidence that the current LIC base rate energy charge of $38.05 per megawatt-hour (mWh) is greater than the actual unit energy cost of $24.75 per mWh.[48] Further, Mr. Baron alleged that the current LIC base rate energy charge results in low load factor large industrial customers

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[45] Application at 26; Smith Direct Testimony at 33:3–15.

[46] Application at 28, *citing* Case No. 2017-00287, *An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2016 through April 30, 2017* (Ky. PSC Feb. 2, 2018) Order at 2.

[47] *Id.* at 31–32.

[48] Direct Testimony of Stephen J. Baron (Baron Direct Testimony) at 4:2–5.

being subsidized by high load factor large industrial customers.[49] KIUC proposed a revenue neutral design where the excess energy costs be moved to the LIC base rate demand charge, with the new lower LIC energy charge of $24.75 per mWh and an increased LIC demand charge of $18.731 per kilowatt (kW) from the current rate of $10.7150 per kW.[50] KIUC also proposed that the revised rate design not be applied to coal mine customers or economic development rate load.[51]

According to KIUC's witness in this matter, there were two material errors in the cost-of-service study (COSS) that resulted in unreasonable rates being approved in the 2013 rate case. First, the cost of energy to supply off-system sales should have been, but was not, offset by a revenue credit for off-system sales, which was inappropriately assigned to demand function instead of energy.[52] Additionally, the unit energy cost was overstated because the costs for certain riders were also assigned to demand function instead of production energy.[53]

KIUC's direct testimony based the revised rate design on 2019 financial data and billing determinants. After an informal conference with Commission Staff, KIUC provided the proposed LIC rate design using 2013 financial data and billing determinants, with a

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[49] *Id.* at 4:6-9.

[50] KIUC Post-Hearing Brief at 8; Baron Direct Testimony at 18:2–3, 20:10–12.

[51] KIUC Post-Hearing Brief at 8; Baron Direct Testimony at 5:6–15.

[52] Baron Direct Testimony at 10:2–11, 15–19.

[53] *Id.* at 11:11–21.

proposed energy charge of $33.267 per mWh and a demand charge of $13.406 kW for the LIC.[54]

SETTLEMENT AGREEMENT

The Settlement reflects the agreement of the parties on all issues in this case. The substantive areas addressed in the Settlement are as follows:

- Modify the MRSM Tariff to establish a New TIER Credit, with 50 percent of the net margins above the margins needed to produce a 1.30 TIER utilized to reduce the unamortized balance of the SLM Regulatory Assets through a charge to depreciation and amortization expense, and the remaining 50 percent of net margins above the margins needed to produce a 1.30 TIER returned to Members as a Monthly Bill Credit.

- The margins credited through the Monthly Bill Credit are allocated between the Rural Class and the LIC in proportion to revenues received from each class in the previous year. The portion allocated to the LIC is applied to bills based on kWh sales within that class, excluding sales under an EDR and sales to which BREC's FAC is inapplicable. The portion allocated to the Rural Class is applied to bills based on the number of retail customers served by each Member.

- Cease deferring depreciation expense for the Wilson Station as of December 31, 2020, and begin recovering depreciation expense for the Wilson Station through existing rates effective January 1, 2021.

- Cease deferring depreciation expense for Coleman Station as of the date of retirement.

[54] KIUC's Response to Post-Informal Conference Request for Information (Response to Post-IC Request), Item 1.

- Establish a regulatory asset for Coleman Station retirement costs, including the net book value and decommissioning costs.
- Establish a regulatory asset for Reid Station Unit 1 retirement costs, including the net book value and decommissioning costs.
- Recover the amortization of the SLM Regulatory Assets through an annual charge to depreciation and amortization expense over a period ending December 31, 2043.
- Implement an LIC rate design that increases the demand charge to $13.406 per kW and decreases the energy charge to $33.267 per MWh. The LIC rate design does not apply to coal mine customers or economic development load.
- BREC is not required to make any changes to its depreciation rates or its fuel cost-stacking methodology at this time.
- In calculating the TIER for the New TIER Credit, BREC can include expenses for economic development, promotional advertising, and Touchstone Energy dues up to $400,000 annually.
- In 2021, BREC will record a one-time reduction in the balance of the SLM Regulatory Assets in the amount of 80 percent of BREC's Equity Headroom as of December 31, 2020. BREC estimates this amount will be approximately $91,000,000.
- Cease recording the DSM Regulatory Liability in 2020 and utilize the DSM Regulatory Liability accrued through December 31, 2019 to record a one-time amortization of the SLM Regulatory Assets.
- Prioritize the reduction in the SLM Regulatory Assets as follows to reduce each regulatory asset until fully recovered:

  - Focused Management Audit Expenses
  - Wilson Station Deferred Depreciation
  - Coleman Station Deferred Depreciation
  - Reid Station Unit 1 Regulatory Asset
  - Station Two Regulatory Asset
  - Coleman Station Regulatory Asset
- Starting in 2021 and continuing through 2043, BREC will file the following no later than February 28 each year:
  - Year-end TIER calculation for the prior calendar year
  - The amount of the New TIER Credit that will flow through the MRSM Rider during the following twelve months
  - The amount charged to depreciation and amortization expense for recovery of the SLM Regulatory Assets in the prior calendar year that will reduce the SLM Regulatory Assets balance
  - Status of amortization of SLM Regulatory Assets
  - Interest savings gained (annualized) once investment grade rating are received from at least two of the three rating agencies
  - Status of and expected decommissioning costs of Coleman Station, Reid Station Unit 1, and BREC’s estimated share of costs associated with Station Two
  - Copy of any proposal to decommission Coleman Station, Reid Station Unit 1, and Station Two that was awarded in the prior year

DISCUSSION AND FINDINGS

As an initial matter, the Commission commends BREC for its ability to recover from the precipice of financial insolvency and arrive to the point it is today. To have even a cursory understanding of the path BREC has taken over the past thirty years, but certainly the last ten years, provides an appreciation for the job accomplished by BREC. The Commission understands that the recent improvement in credit rating agencies' view of BREC is due in part to the Commission's actions and support. As explained below in more detail, the Commission will do what it must, within the confines of KRS Chapter 278, to continue to support the health and creditworthiness that BREC and its Members deserve. We hope that with this Order and BREC's near-future plans the utility's troubled past becomes but a mere memory.

Having reviewed the record and being sufficiently advised, the Commission finds that the provisions of the Settlement are supported by substantial evidence, in the public interest and should be approved, subject to the modifications discussed below. Our approval of the Settlement, as modified, is based solely on its reasonableness and does not constitute precedent on any issue, except as specifically provided for in this Order.

Amortization Adjustment

The Settlement adopts BREC's as-filed position to annually adjust the amortization expense for the SLM Regulatory Assets. BREC states that credit rating agencies would view its proposal more favorably than utilizing a regulatory liability account to defer margins because of uncertainty of recovery and the larger regulatory asset balance.[55] The Commission appreciates BREC's concerns. Nevertheless, the Commission believes

[55] Smith Settlement Testimony at 20.

the proposal to adjust a regulatory asset's amortization expense without Commission approval is untenable and ultimately inappropriate. Reducing the amortization expense in any given year BREC cannot achieve a 1.30 TIER merely reduces the likelihood the SLM Regulatory Assets are not timely amortized. As noted before, the Commission is interested in and will work to ensure BREC's long-term financial health. The Commission finds that BREC should defer the 60 percent of margins in excess of those necessary to achieve a 1.30 TIER to a regulatory liability account. To address any concerns about the use of the regulatory liability, the Commission finds the following: This regulatory liability will only be used to reduce the SLM Regulatory Assets or help BREC achieve a TIER of 1.30. Further, the regulatory liability will only be used to help BREC achieve a TIER of 1.30 one time, as explained later in this order. As such, the vast majority of the balance of the regulatory liability will assuredly be used to further reduce the balances of the SLM Regulatory Assets. The Commission also finds that BREC should retain a minimum balance in the regulatory liability to ensure that an adequate balance is maintained to allow BREC to achieve a TIER of 1.30. The Commission will initially set the minimum balance at $9.0 million, but BREC may request to reset this amount as its interest expense changes. BREC may request to use any deferred amount over the minimum balance to reduce the SLM Regulatory Assets at any time. BREC may reduce the regulatory liability below the minimum balance only as necessary to achieve a TIER of 1.30. In the event that BREC management reasonably believes the likelihood that the regulatory liability balance is insufficient for BREC to achieve a TIER of 1.30 is probable, BREC shall immediately file a case with the Commission requesting to address the deficiency.

Regulatory Exclusions

BREC proposed in its Application to exclude expenditures on promotional, political, and institutional advertising pursuant to 807 KAR 5:016, lobbying costs, and donations from its margin calculations. The Settlement provides that BREC can include expenses for economic development, promotional advertising, and Touchstone Energy dues up to $400,000 annually in the calculation of its margins for the New TIER Credit. BREC states that the purpose of this provision is to reduce the difference between its actual margins and its margins under the New TIER Credit.[56] The Commission agrees that no public purpose is served by requiring BREC to artificially increase its margins to calculate the New TIER Credit. The Commission finds that BREC should include all expenses in its net margin calculation. BREC has provided its annual expenses for 401(k) matching for employees also participating in a defined benefit retirement plan, supplemental executive retirement plans (SERP), life Insurance premiums in excess of annual salaries or $50,000, board of directors' per diems for attending industry association meetings and Christmas gifts, advertising, economic development, lobbying, donations, and Touchstone Energy dues.[57] The average of these amounts is nearly $1.0 million annually. While the Commission applauds BREC's successful mitigation of the loss of the smelter load, it is nonetheless gravely concerned about the level of discretionary spending that BREC continues to incur that provides little discernable benefit to its Members. BREC is not alone in its decision to incur costs determined to be unreasonable by the Commission; however, that does not excuse this behavior. Therefore, the Commission places BREC

[56] *Id.* at 18.

[57] BREC's Response to Commission Staff's Second Request for Information, Item 7(b) and Commission Staff's Third Request for Information, Item 6.

on notice that these discretionary expenses should be materially reduced before BREC's next rate case, or it could result in the initiation of a show cause proceeding by the Commission to determine why penalties should not be imposed for failure to comply with this Order. Ultimately, management is responsible for the costs discussed above, and as such will be the focus of the Commission's subsequent matters on this issue if not materially addressed.

Wilson Station Used and Useful

The Settlement recommends that the Commission enter an order finding that the Wilson Station is "used and useful" for the benefit of its Members in conjunction with a finding to cease deferring and begin recovering the depreciation expense for Wilson through existing rates. Consistent with Commission and state court precedent, whether the Wilson Station is "used and useful" is not the determining standard for cost recovery. Pursuant to KRS 278.030(1), the Commission's statutory standard to be applied to this determination is ultimately whether the rates are "fair, just, and reasonable. "Used and useful" on the other hand is a factor but not controlling in a determination of fair, just, and reasonable rates.[58] The Commission finds that recovering depreciation expense for Wilson Station through existing rates is fair, just, and reasonable. As discussed above, Wilson Station's depreciation expense was deferred because BREC intended to idle Wilson Station in 2013. However, Wilson Station was never retired. Instead, as established by substantial evidence in the case record, it continues to operate to serve native load and to market excess power, with revenue from off-system sales from Wilson Station used to offset the fixed cost to BREC and its Members.

[58] *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 510-514 (Ky. App. 1990).

Decommissioning Costs

The Settlement provides for regulatory assets treatment of decommissioning costs at Coleman Station, Reid Station Unit 1, and Station Two as proposed in BREC's Application. The Commission finds that, while these expenses are approved for regulatory asset treatment, the Commission reserves the right to review these expenses and disallow any items or amounts found not to be fair, just, and reasonable. BREC should file, in addition to the filings agreed upon in the Settlement, testimony is support of the reasonableness of the decommissioning costs and detailed descriptions of all actions BREC has taken to minimize decommissioning costs.

Annual Filing

The Settlement provides that BREC will annually file certain information no later than February 28. The Commission finds that BREC should provide, in addition to the information required by the Settlement, its current Member equity balance and the minimum required by its loan covenants. While the Settlement does not specify the forum of this report, the Commission finds that BREC should file a formal docketed proceeding in the form of an annual application to revise its MRSM rates that should include all information laid out in the Settlement and this Order. BREC will be allowed to implement its MRSM rates as of February 28, subject to prospective changes. This will allow the Commission, BREC, KIUC, and the Attorney General to conduct discovery and review the MRSM annually. BREC may propose adjustments and alterations as it deems necessary. Additionally, the Commission will monitor BREC's Member equity and will entertain proposals to utilize excess Member equity to reduce the SLM Regulatory Assets and may order such treatment when appropriate.

DSM Regulatory Liability

In Case No. 2018-00236,[59] BREC filed and received approval to discontinue certain DSM programs. The application also requested approval to defer any difference between future DSM expenditures and the amount included in base rates into a regulatory liability, which would be offset in BREC's next rate case against the regulatory asset associated with the annual depreciation expense for the Wilson Station.[60] In this Order, the Commission found it reasonable to create a regulatory liability for the unspent portion. However, the Commission noted that since the DSM revenues and costs were only collected in the rural base rates, the regulatory liability should be used in BREC's next rate case exclusively for the benefit of the rural customer class.[61] In the proposed Settlement, BREC will utilize the DSM regulatory liability accrued through December 31, 2019, to record a one-time amortization of the SLM Regulatory Assets and will cease recording the DSM regulatory liability in 2020. Hence, the balance of the DSM regulatory liability, when applied to the proposed regulatory asset, will ultimately benefit all consumers, not just rural customers, and the same is true if BREC stops deferring DSM revenues to the DSM regulatory liability. BREC supports this treatment of the DSM regulatory liability balance, stating that the annual benefits the Rural customers will receive from the combined reduction of the SLM Regulatory Assets and the receipt of the

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[59] Case No. 2018-00236, *Demand-Side Management Filing of Big Rivers Electric Corporation on Behalf of Itself, Jackson Purchase, Energy Corporation, and Meade County R.E.C.C. and Request to Establish a Regulatory Liability* (Ky. PSC Dec. 12, 2018).

[60] Application at 21. BREC's rates contain a DSM component based upon $1 million of annual spend. Once the DSM programs were phased out, BREC estimated an annual savings of approximately $750,000.

[61] Case No. 2018-00236, Final Order, at 9.

Monthly Bill Credit surpasses a one-time utilization of the DSM regulatory liability, which would amount to approximately $7.00 per Rural customer.[62]

The Commission agrees that applying the balance of the DSM regulatory liability to the SLM Regulatory Assets is reasonable as the benefits of reducing the overall amount of the BREC's regulatory assets outweigh the amount of the DSM regulatory liability balance that is spread between the Industrial and Rural rate classes. If BREC's history informs the Commission of nothing else, it is LIC customers that may come and go based on a number of factors; and the rural class is always left holding the bag. As such, reduction of any outstanding regulatory assets, as soon as possible, ultimately benefits the rural class to a significant degree. However, for the calculation of the New TIER Credit beginning in 2021, the Commission finds that until rates are altered through a base rate case and DSM costs are no longer embedded in the Rural rates, the first $700,000 towards the New TIER Credit will be applied to the Rural class with the balance being allocated, as proposed in the Settlement, in proportion to the revenues received from each class, excluding revenue from sales under EDR and sales to which the FAC is inapplicable.

Allocation of TIER Credit

The proposed New TIER Credit allocates 50 percent of the net margins above the margins needed to produce a 1.30 TIER towards the reduction of the unamortized balance of the SLM Regulatory Assets, and the remaining 50 percent of net margins is to be returned to Members as a Monthly Bill Credit. In addition, the margins credited through the Monthly Bill Credit are proposed to be allocated between the Rural Class and the LIC

[62] BREC's Post-Hearing Brief at 8.

in proportion to revenues received from each class. The portion allocated to the LIC is applied to bills based on kWh sales within that class, excluding sales under an EDR and sales to which BREC's FAC is inapplicable. The portion allocated to the Rural Class is applied to bills based on the number of retail customers served by each Member. BREC contends that the proposed New TIER Credit is a more simplified mechanism and could provide increased MRSM credits to its Members and their retail member-customers.[63]

The Commission recognizes the importance of maintaining continuity in regards to the amount, application, and allocation of the monthly MRSM credits. Therefore, the Commission finds that the allocation between the Monthly Bill Credit and SLM Regulatory Assets should be revised from a 50/50 split to a 40/60 split, respectively. Increasing the amount of excess margins used to accelerate amortization of the regulatory assets will help all customers, Members, and BREC by more quickly paying down the significant monetary burden represented by the SLM Regulatory Assets. Given the expected significant positive margins over the next few years, the Commission will not allow the influx of healthy margins to come and go without using them to reduce BREC's long-term financial burden. The Commission also finds that after the $700,000 DSM credit is applied to the Rural Class, the monthly MRSM credits will allocated to the Rural Class and LIC as proposed, but the Monthly Bill Credit will be applied to each Member's bill based on kWh sales for both the Rural and LIC classes. The Commission reasons that applying the credit through usage as opposed on a per unit basis is a more equitable distribution between all customers within the Rural Class. This revised allocation and credit not only

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[63] Application at 93 and 95.

allows for a more expedited draw down of the SML Regulatory Assets, but also maintains a similar bill credit on customer's bills.[64] As is always the case, the Commission reserves the right to modify the application of the bill credits and the split of excess margins in BREC's annual proceedings.

LIC Rate Design

The settlement includes KIUC's revised proposed rate design change for the LIC, which is characterized as a remedy for the rate design disparity from cost of service that results in LIC customers with high load factors subsidizing LIC customers with lower load factors. The proposed rate design change would exclude all of the LIC coal mine customers and the LIC EDR customers and will reduce the energy charge from $38.050/mWh to $33.267/mWh. The proposed rate design will also increase the demand charge proportionally from $10.715/kW to $13.406/kW so that the resulting rate design is revenue neutral.[65] As mentioned above, support for this rate design change was due to perceived errors in the 2013 Rate Case COSS. The Commission finds that KIUC has not met its burden of proof as the support set forth by KIUC is not comprehensive, but rather a snap shot of a 2013 COSS. Further, the Commission believes this is not a venue to revise rate design, especially based on a COSS that is over seven years old.[66] Issues

[64] Using the average bill credit for 2016 and 2017 for the Rural class customer. In addition, the allocation maintains the current rate structure, which BREC notes are competitive in the Commonwealth of Kentucky, as well as the nation on page 5 of BREC's Updated Corrective Plan to Achieve Two Credit Ratings of Investment Grade, January 28, 2019.

[65] Settlement Testimony of Stephen J. Baron Settlement, Exhibit at 3.

[66] KIUC cited to Case No. 2018-00407 *A Review of the Rate Case Procedure for Electric Distribution Cooperatives* (Ky. PSC Mar 26, 2019) for use of a streamlined method for COSS on page 25 of Baron's Direct Testimony; however, page 1 of Appendix A to Case No. 2018-00497 March 26, 2019 Order states that the COSS must be less than five (5) years old.

with the COSS should have been addressed and litigated in the 2013 Rate Case and, as such, were not, and the Commission found the COSS to be reasonable.[67] The Commission does note concern with the issues raised by KIUC in this matter and finds that BREC is to file a minimum of two fully allocated COSSs based upon NARUC approved methods during the 2021 annual filing of the New TIER Credit so that the Commission can determine whether there is a need to reevaluate the current LIC rate design.

OTHER FINDINGS

1.30 TIER

BREC stated that it chose the New TIER Credit to be based upon a 1.30 TIER as it was the TIER approved by the Commission in BREC's last rate case, Case No. 2013-00199,[68] and such a TIER ensures BREC has an adequate amount of capital.[69] BREC asserts that the best opportunity to regain its investment grade credit ratings would be to maintain a 1.30 TIER as anything less would be a credit negative for the credit rating agencies.[70] BREC maintains credit agencies view cooperatives holistically and any reduction in retained equity, or the difference between a 1.30 and 1.10 TIER, would be viewed as a credit negative which will limit BREC's access to low cost funds from RUS and capital markets.[71] BREC further contends that maintaining net margins and retaining

[67] *See*, Case No. 2013-00199, April 25, 2014 Order, at 33.

[68] Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported By Fully Forecasted Test Period* (Ky. PSC Apr. 25, 2014).

[69] Smith Settlement Testimony at 4.

[70] BREC's Post-Hearing Brief at 2.

[71] *Id*. at 6–7.

earnings equal to a 1.30 TIER ensures that the Cooperative will maintain a minimal level of cash flow and capital above the required 1.10 margin for interest ratio (MFIR) included in BREC's Indenture, allow for BREC to maintain its physical plants, and ensure there is adequate cash on hand for any unexpected expenses.[72] BREC notes that the request is actually low for a G&T cooperative as the national median TIER between 2016 and 2018 for G&T cooperatives is 1.59.[73]

BREC's current debt covenants are based upon MFIR and require a 1.10 margin. The difference between MFIR and TIER is MFIR includes income taxes and extraordinary expenses; however, the two are typically equal to each other for BREC.[74] The Commission recognizes that credit markets and regulating bodies defer to TIER as it is the most common index used to describe a cooperative's financial condition and that the two indexes are similar. The Commission also recognizes that some sort of margin or cushion is necessary as a safeguard against an unexpected expense or shift in revenues. Therefore, the Commission finds that a TIER of 1.30 is a reasonable matrix for the New TIER Credit.

IT IS THEREFORE ORDERED that:

1. The provisions in the Settlement as set forth in the Attachment to this Order are approved subject to the modifications and deletions set forth in this Order.

2. BREC's MRSM Tariff is approved, as modified by this Order, for service rendered on and after the date of entry of this Order.

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[72] *Id*. at 4.

[73] *Id*. at 6.

[74] BREC's Response to Staff's First Request, Item 26.

3. Ordering paragraph 7 of the December 12, 2018 Order in Case No. 2018-00236 is revoked as of the date of entry of this Order.

4. BREC is authorized to cease accruing a regulatory liability for DSM revenues as of January 1, 2020.

5. BREC is authorized to use the DSM Regulatory Liability to reduce the SLM Regulatory Assets.

6. BREC is authorized to establish a regulatory asset for the actual remaining net book value and decommissioning costs for Coleman Station, subject to Commission review of any decommissioning costs.

7. BREC is authorized to establish a regulatory asset for the actual remaining net book value and decommissioning costs for Reid Station Unit 1, subject to Commission review of any decommissioning costs.

8. BREC is authorized to amortize the SLM Regulatory Assets through the MRSM over a period no longer than the expiration of the Member Contracts on December 31, 2043.

9. BREC is authorized to establish a regulatory liability for 60 percent of its net margins in excess of those margins necessary to achieve a TIER of 1.30. This regulatory liability shall be used for the sole purpose of reducing the SLM Regulatory Assets or help BREC achieve a TIER of 1.30.

10. BREC shall file annually, by February 28, an application to adjust its MRSM rates, containing at minimum the information contained in the Settlement, as modified herein.

11. Within 20 days of the date of this Order, BREC shall, using the Commission's electronic Tariff Filing System, file its revised tariffs reflecting modifications approved or as required herein and reflecting their effective date and that they were authorized by this Order.

12. This case is closed and removed from the Commission's Docket.

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By the Commission

ENTERED

JUN 25 2020 rcs

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2020-00064 DATED JUN 25 2020

[THIRTY-TWO PAGES TO FOLLOW]

<u>SETTLEMENT AGREEMENT, STIPULATION, AND RECOMMENDATION</u>

This Settlement Agreement, Stipulation, and Recommendation ("Agreement" or "Settlement Agreement") is entered into this 28th day of May, 2020, by and among the Attorney General of the Commonwealth of Kentucky ("Attorney General"), Big Rivers Electric Corporation ("Big Rivers"), and Kentucky Industrial Utility Customers, Inc. ("KIUC") with respect to *In the Matter of: Application of Big Rivers Electric Corporation for Approval to Modify its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, P.S.C. Case No. 2020-00064 (the "Proceeding"). The Attorney General, Big Rivers, and KIUC may be referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, on February 28, 2020, Big Rivers filed an Application (the "Application") with the Kentucky Public Service Commission (the "Commission") in the Proceeding;

WHEREAS, in its Application, Big Rivers sought an order from the Commission:

(i) finding that the Wilson Station is "used and useful" for the benefit of Big Rivers' Members, authorizing Big Rivers to cease deferring the depreciation expenses for the Wilson Station into a regulatory asset as of December 31, 2020, and authorizing Big Rivers to collect depreciation expenses for the Wilson Station as of January 1, 2021;

(ii) authorizing Big Rivers to establish regulatory assets for the costs related to the retirement of the Coleman Station (the "Coleman Station Regulatory Asset") and Reid Station Unit 1 (the "Reid Station Unit 1 Regulatory Asset"), including the unrecovered net book value of the generating stations and all actual costs related to retirement, such as decommissioning costs, subject to the approval of the Rural Utilities Service (“RUS”) to establish the same;

(iii) authorizing Big Rivers to recover through amortization the previously established Station Two Retirement Costs Regulatory Asset, the previously established Wilson Station Depreciation Deferral Regulatory Asset, the previously established Coleman Station Depreciation Deferral Regulatory Asset, the Coleman Station Regulatory Asset (subject to RUS’s approval of its establishment), the Reid Station Unit 1 Regulatory Asset (subject to RUS’s approval of its establishment), and the Focused Management Audit expenses incurred by Big Rivers, pursuant to KRS 278.255(3) (collectively, the “Smelter Loss Mitigation Regulatory Assets”), over a period no longer than through December 31, 2043, which is the date of expiration of the all-requirements contracts between Big Rivers and its Members; and

(iv) authorizing Big Rivers to modify its Member Rate Stability Mechanism (“MRSM”) Tariff, including ceasing the accrual of the Demand Side Management (“DSM”) regulatory liability in 2020, to provide a monthly bill credit to Big Rivers’ Members and increased amortization of the Smelter Loss Mitigation Regulatory Assets following any calendar year in which Big Rivers’ times interest earned ratio (“TIER”) exceeds 1.30;

WHEREAS, on April 13, 2020, the RUS granted approval of the establishment of the Coleman Station Regulatory Asset and Reid Station Unit 1 Regulatory Asset;

WHEREAS, the Commission granted the Attorney General and KIUC full intervention in the Proceeding. The members of KIUC who are participating in this proceeding are Domtar Paper Co., LLC and Kimberly Clark Corporation. The individual rights of other KIUC member companies are not affected or limited by this Settlement Agreement;

WHEREAS, KIUC filed testimony in this Proceeding in which KIUC recommended that: Big Rivers’ Application be approved; Big Rivers’ Large Industrial Class (“LIC”) rate design be adjusted to reflect full cost of service by increasing the demand charge to $18.731 per kW and lowering the energy charge to $24.75/MWh;

this new rate design shall not apply to coal mine customers or economic development load; this new rate design is revenue neutral to Big Rivers and the Rural Class; Kenergy Corp. ("Kenergy"), Meade County Rural Electric Cooperative ("MCRECC") and Jackson Purchase Energy Corporation ("JPEC")[1] shall be authorized to include their existing retail adders on the new LIC rate to keep them whole; the fuel adjustment clause allocation method between native load and off-system sales be maintained; Big Rivers should continue seeking mechanisms to lower the rates of the retail customers of its three Members; Big Rivers should make quarterly reporting filings to the Commission and the Parties; there should be established a prioritization of the write-down of the regulatory assets; and that Big Rivers should maintain a 20% Member Equity cushion throughout the term of this plan;

WHEREAS, the Attorney General did not file testimony in this matter, thus reserving his right to comment and provide the Commission any proposal for its consideration;

WHEREAS, the Parties have conducted discovery, reviewed documents provided in discovery, and reviewed the issues raised in this Proceeding and have reached a settlement of the case, including the issues raised therein, as embodied in this Agreement;

WHEREAS, the adoption of this Agreement will support the Commission's administrative efficiency and eliminate the need for the Parties to potentially expend significant resources litigating these proceedings;

[1] JPEC, Kenergy, and MCRECC are collectively referred to herein as the "Members."

WHEREAS, the adoption of this Agreement not only mitigates the economic impacts of the COVID-19 pandemic by reducing cross-subsidies in the Large Industrial class, by reducing the TIER threshold for which Big Rivers will provide a TIER Credit benefit to its Members in calendar year 2020 from 1.45 to 1.30, by avoiding current increases to base rates, and by increasing the financial stability of Big Rivers, but it also provides longer-term benefits to the Members and their retail member-customers as described in Big Rivers' Application;

WHEREAS, the Parties recognize that if Big Rivers receives an investment grade credit rating from at least two of the three credit rating agencies then its borrowing costs will decline, and that concerns surrounding the economic effects of COVID-19 have made achieving an investment grade credit rating more difficult;

WHEREAS, the Parties recognize that the probability of achieving an investment grade credit rating is increased if Big Rivers' ratemaking TIER of 1.30 for purposes of this Agreement is as close as possible to an actual TIER of 1.30;

WHEREAS, in addition to Big Rivers' normal efforts to minimize the rates charged to its Members, Big Rivers will continue to explore ways to ease the economic burden on its Members and their retail member-customers arising from the COVID-19 pandemic, including the possibility of participating in government-sponsored programs to alleviate the economic effects of COVID-19, which could provide increased MRSM credits to the Members and their retail member-customers; and

WHEREAS, it is the position of the Parties that this Agreement is a fair, just, and reasonable resolution of all of the issues in the Proceeding, is supported by sufficient and adequate data and information, and should be approved by the Commission;

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

1. Capitalized terms used but not defined herein shall have the meanings set forth in Big Rivers' Application or in Big Rivers' tariff on file with the Commission.

2. The Parties recommend that the Commission grant, without change or condition except as provided herein, Big Rivers' request made in its Application that the Commission enter an order authorizing Big Rivers to:

(i) cease deferring the depreciation expenses for the Wilson Station as of December 31, 2020, and begin recovering the depreciation expenses through existing rates for Wilson Station as of January 1, 2021 because the Wilson Station is "used and useful" for the benefit of its Members;

(ii) cease deferring depreciation expenses of the Coleman Station as of the date of retirement;

(iii) establish a regulatory asset for the costs related to the retirement of the Coleman Station, including the unrecovered net book value and the actual costs related to retirement, such as decommissioning costs;

(iv) establish a regulatory asset for the costs related to the retirement of Reid Station Unit 1, including the unrecovered net book value and the actual costs related to retirement, such as decommissioning costs;

(v) recover, through an annual charge to depreciation and amortization expense, the amortization of the Smelter Loss Mitigation Regulatory Assets over a period no longer than through the end of the Member "all-requirements" contracts, December 31, 2043; and

(vi) modify its MRSM Tariff as proposed in its Application, except as provided herein, to establish the New TIER Credit, which provides that 50% of net margins above the margins needed to produce a 1.30 TIER will be utilized to reduce the unamortized balance of the Smelter Loss Mitigation Regulatory Assets through a charge to depreciation and amortization expense and the remaining 50% of net margins above the margins needed to produce a 1.30 TIER will be provided to Members as a Monthly Bill Credit.

3. The Parties recommend that Big Rivers not be required to make any changes to its depreciation rates or its fuel cost stacking methodology at this time.

4. In calculating its TIER for purposes of the New TIER Credit, Big Rivers shall be authorized to include economic development expenses, promotional advertising expenses, and Touchstone Energy dues in a cumulative annual amount not to exceed four hundred thousand dollars ($400,000).

5. The Parties recommend that in addition to the relief sought in Big Rivers' Application filed in the Proceeding, the Commission adopt the Large Industrial Class ("LIC") rate design described in this paragraph. Except for the LIC rate design applicable to service to the Members for their coal mine and oil industry customers ("Fossil Fuel Customers") and their load served under an economic development rate ("EDR"), the LIC rate design applicable to service to the Members for all other Large Industrial customers shall adjust to cost of service, as determined in KIUC's Direct and Settlement Testimony filed in this Proceeding. For service beginning the calendar year 2021, the LIC energy rate will be $33.267/MWh and the demand charge will be $13.406 per kW per month. The existing LIC rate design shall be maintained for service to the Members for their Fossil Fuel Customers and load served under an EDR until changed by Commission order.

6. This Agreement does not affect the current retail adders charged by the Members on LIC customers, nor does it prevent the Members from seeking to change

such adders. This Agreement also does not prevent any Party hereto from making appropriate filings with the Commission seeking a change in Big Rivers' rates to its Members.

7. The Attorney General agrees to the recommendations contained in Paragraph 5 of this Agreement since the changes affecting the LIC rate design are revenue neutral to the Rural Class.

8. The Parties further recommend that, for any year in which a Monthly Bill Credit is to be paid under the new MRSM Tariff, the margins to be credited through the Monthly Bill Credit shall be allocated between the Rural Class and the LIC in proportion to the revenues received from each class for the calendar year in which Big Rivers earned the margins, excluding revenue applicable to sales under an EDR as well as sales to which Big Rivers' Fuel Adjustment Clause is inapplicable. The portion of the Monthly Bill Credit allocated to the LIC shall be applied to Member bills based on kWh sales within the Large Industrial class, excluding sales under an EDR and sales to which Big Rivers' Fuel Adjustment Clause is inapplicable. The portion of the Monthly Bill Credit allocated to the Rural Class shall be applied to Member bills based on the number of retail customers served by each Member. An illustrative example of the application of Big Rivers' proposed MRSM Tariff incorporating the terms of this Agreement, including operation of the New Tier Credit, is attached hereto as Exhibit 1.

9. The Parties recommend that the Commission approve tariff changes for the Members to accomplish the purposes of this Agreement, including allocating any

MRSM credits received for the Rural Class to retail customers on a per customer basis and the new LIC rate design.

10. In 2021, and with no charge to net margins before 2021, Big Rivers agrees to record a one-time reduction in the balance of the Smelter Loss Mitigation Regulatory Assets as a charge to depreciation and amortization expense in the amount of eighty percent of its equity in excess of the minimum equity required by its loan covenants (the "Equity Headroom") as of December 31, 2020. Big Rivers estimates this amount as approximately $91 million in its Application at Paragraph 65, and the actual utilization of eighty percent of Equity Headroom will be determined as illustrated by Exhibit 6 to the Direct Testimony of Robert W. Berry, provided that Big Rivers' minimum equity level will be determined by Big Rivers' loan covenants in effect from time to time.

11. Big Rivers agrees to utilize the DSM regulatory liability accrued through December 31, 2019 to record a one-time amortization of the Smelter Loss Mitigation Regulatory Assets, and will cease recording the DSM regulatory liability in 2020.

12. The reduction in Smelter Loss Mitigation Regulatory Assets shall be prioritized in the following order so as to reduce the specific regulatory assets, until fully recovered:

a. Focused Management Audit Expenses
b. Wilson Station Deferred Depreciation
c. Coleman Station Deferred Depreciation

d. Reid Station Unit 1 Regulatory Asset

e. Station Two Regulatory Asset

f. Coleman Station Regulatory Asset

13. Starting in 2021 and each calendar year thereafter (through 2043), no later than February 28 of each calendar year, Big Rivers agrees to provide the Commission, the Attorney General, and KIUC with a report containing the following information:

a. its calculation of its year-end TIER for the prior calendar year;

b. the amount of adjusted net margins that will flow through the MRSM Rider as a credit to Big Rivers' Members during the following twelve months;

c. the amount Big Rivers will charge to depreciation and amortization expense for recovery of the Smelter Loss Mitigation Regulatory Assets in the prior calendar year, which will result in the reduction of the balance of Smelter Loss Mitigation Regulatory Assets;

d. the overall status of the amortization of the Smelter Loss Mitigation Regulatory Assets;

e. once investment grade ratings are received from at least two of the three rating agencies, all interest savings gained (annualized) as a result thereof;

f. the status of and anticipated decommissioning costs expected to be incurred by Big Rivers for each of the Coleman Station, Reid Station

Unit 1, and Station Two (including the total anticipated decommissioning costs of Station Two and Big Rivers' estimated share of such costs); and

g. a copy of any awarded proposal(s) for the decommissioning of the Coleman Station, Reid Station Unit 1, and Station Two in the prior year.

14. Big Rivers shall periodically explore and evaluate opportunities to mitigate the amount of future regulatory asset amortization expense in the retail rates of the Members, including the potential use of Equity Headroom.

15. In any future proceeding before the Commission, the Parties reserve their rights to advocate for the appropriate allocation and manner of recovery of the annual amortization of the Smelter Loss Mitigation Regulatory Assets, which allocation and manner of recovery may vary depending on factors including whether Big Rivers has in fact achieved the investment grade credit ratings that are a material object of this Application. In any appropriate future proceeding before the Commission, the Parties agree and acknowledge that they will stand by their representations in the settlement agreement approved in Case No. 2018-00146 and in this Proceeding. All Parties agree that full recovery of the Smelter Loss Mitigation Regulatory Assets should occur by the later of December 31, 2043, or the expiration of the Member all-requirements contracts.

16. The Agreement is not intended to, and does not, have any effect on the Commission's decision that Big Rivers' rates established in Case No. 2013-00199 were fair, just, and reasonable.

17. The Parties agree that this Agreement is subject to the acceptance of and approval by the Commission and the RUS, and they agree to act in good faith and to use their best efforts to secure these approvals. Following the execution of this Agreement, Big Rivers will file this Agreement with the Commission and the RUS together with a request that the Commission and the RUS consider and approve this Agreement without modification. If the Commission and RUS approve this Agreement without modification, the Parties each waive any right to appeal or file an action seeking review of or to seek reconsideration of any order of the Commission issued in accordance with this Agreement.

18. The Agreement shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

19. If the Commission does not accept and approve this Agreement in its entirety and without change, or if the Commission imposes conditions on its acceptance and approval that are unacceptable to any Party, then any adversely affected Party may withdraw from this Agreement within the statutory periods provided for rehearing and appeal of the Commission's order by: (i) giving notice of withdrawal to all other Parties; and/or (ii) timely filing for rehearing or appeal. If any Party timely seeks rehearing of or appeals the Commission's order, all Parties will continue to have the right to withdraw until the conclusion of all rehearings and appeals.

20. If the Agreement is voided or vacated for any reason after the Commission has approved the Agreement, none of the Parties will be bound by the Agreement.

21. If the RUS does not accept and approve this Agreement in its entirety and without change, or if the RUS imposes conditions on its acceptance and approval that are unacceptable to any Party, then any adversely affected Party may withdraw from the Agreement within seven (7) days of that Party's receipt of notification of RUS' non-approval or imposition of change or conditions, by the withdrawing Party giving written notice of its withdrawal to all other Parties. If any Party timely withdraws from the Agreement under this paragraph, then any other Party or Parties will continue to have the right to withdraw for seven (7) days after receiving the notice of withdrawal.

22. Upon the later of: (i) the expiration of the statutory periods provided for rehearing and appeal of the Commission's order; (ii) the conclusion of all rehearings and appeals; and (iii) the expiration of the withdrawal period following RUS' non-approval or imposition of changes or conditions, and except as otherwise provided herein, all Parties that have not withdrawn will continue to be bound by the terms of the Agreement as modified by the Commission or RUS.

23. Subsequent to obtaining all required Commission and RUS reviews and approvals, Big Rivers shall file with the Commission tariff amendments reflecting the tariff changes attached hereto as Exhibit 2. The Parties recommend that the Commission (i) approve the tariff revisions filed by Big Rivers pursuant to this

paragraph, as well as any tariff revisions filed by the Members to accomplish the purposes of this Agreement, including allocating any MRSM credits received for the Rural Class to retail customers on a per customer basis and the new LIC rate design, and (ii) allow the wholesale and retail tariff amendments to become effective upon filing with Commission.

24. For purposes of any hearing in the Proceeding, the Parties waive all cross-examination of the other Parties' witnesses except for purposes of supporting this Agreement unless the Commission or RUS disapproves or modifies this Agreement.

25. The undersigned for Big Rivers warrants that he or she is authorized to execute this Agreement on behalf of Big Rivers. Counsel for the Attorney General warrants that he or she is authorized to execute this Agreement on behalf of the Attorney General. Counsel for KIUC warrants that he or she has informed, advised, and consulted with the KIUC members participating in this proceeding (Domtar Paper Co., LLC and Kimberly Clark Corporation) in regard to the contents and the significance of this Agreement, and is authorized to execute this Agreement on behalf of those members.

26. In the Proceeding, each Party agrees to and will support the reasonableness of this Agreement before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of the Agreement.

27. This Agreement shall not be deemed to constitute an admission by any Party that any computation, formula, allegation, assertion, or contention made by any other Party in the Proceeding is true or valid.

28. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors, and assigns.

29. This Agreement constitutes the complete agreement and understanding among the 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 Agreement.

30. The terms of this Agreement are based upon the independent analyses of the Parties, and reflect a fair, just, and reasonable resolution of the issues addressed herein; and the Parties request that the Commission approve the Agreement without change or condition.

31. This Agreement being a product of negotiation among all Parties, no provision of this Agreement shall be strictly construed in favor of or against any Party.

32. This Agreement shall not have any precedential value in this or any other jurisdiction.

33. This Agreement may be executed in multiple counterparts.

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

By: John G. Horne II

Name: John G. Horne, II
Executive Director

Big Rivers Electric Corporation

By: ________________________________

Name: ______________________________

Kentucky Industrial Utility Customers, Inc.

By: ________________________________

Name: ______________________________

16476869.1

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

By: ______________________________

Name: ______________________________

Big Rivers Electric Corporation

By: Robert W Berry

Name: Robert W. Berry

Kentucky Industrial Utility Customers, Inc.

By: ______________________________

Name: ______________________________

16476869.1

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

By: ______________________________

Name: ______________________________

Big Rivers Electric Corporation

By: ______________________________

Name: ______________________________

Kentucky Industrial Utility Customers, Inc.

By: Mil C. Kurt

Name: Michael L. Kurtz

16476869.1

EXHIBIT 1

Big Rivers Electric Corporation

Pro Forma 2019 Assuming New TIER Credit
($ 000's)

2019 New TIER Credit Calculation

Line	Description		Net Margins	TIER (Note)
			(a)	(b)
1	Unadjusted Pre-New TIER Credit Net Margins		$ 44,457	
2	Add Back: Regulatory Exclusions			
3	Total Regulatory Exclusions Per Books	492		
4	Less: Allowed Regulatory Exclusions	-400		
5	Net Regulatory Exclusions Add Back		92	
6	Pre-New TIER Credit Net Margins		44,549	2.20
7	Less: Net Margins to Achieve 1.30 TIER		11,143	1.30
8	New TIER Credit		$ 33,406	0.90
9				
10	Allocation of New TIER Credit:			
11	Additional Smelter Reg Asset Amortization	50%	$ 16,703	
12	2020 Member Bill Credits	50%	$ 16,703	
Note:	TIER based on 2019 long-term debt interest expense =		$ 37,144	

Rural vs. Large Industrial Allocation of Member Bill Credits

Line	Description	Total	Rural	Large Industrial
		(c)	(d)	(e)
1	2019 Total Member Revenue ($)	$ 256,280	$ 195,140	$ 61,140
2	Less: Economic Development and Non-FAC	(2,500)	-	(2,500)
3	2019 Revenue for MRSM Purposes ($)	$ 253,780	$ 195,140	$ 58,640
4	2019 Revenue for MRSM Purposes (%)		76.9%	23.1%
5				
6	2019 TIER Credit to be Billed in 2020 MRSM	$ 16,703	$ 12,843	$ 3,859
7				
8	2020 Rural Bill Credits ($)		$ 12,843	
9	Number of Rural Members		118,000	
10	Annual MRSM Credit ($/Member)		$ 108.84	
11	Monthly MRSM Credit ($/Member)		$ 9.07	
12				
13	2020 Large Industrial Bill Credits ($)			$ 3,859
14	2020 Sales Excluding EDR & Non-FAC (MWh)			950,000
15	MRSM Credit ($/MWh)			$ 4.06

Big Rivers Electric Corporation

Pro Forma 2019 Assuming New TIER Credit and TIER Below 1.30
($ 000's)

2019 New TIER Credit Calculation

Line	Description		Net Margins (a)	TIER (Note) (b)
1	Unadjusted Pre-New TIER Credit Net Margins		$ 10,000	
2	Add Back: Regulatory Exclusions			
3	Total Regulatory Exclusions Per Books	492		
4	Less: Allowed Regulatory Exclusions	-400		
5	Net Regulatory Exclusions Add Back		92	
6	Pre-New TIER Credit Net Margins		10,092	1.27
7	Less: Net Margins to Achieve 1.30 TIER		11,143	1.30
8	New TIER Credit		$ (1,051)	(0.03)
9				
10	Allocation of New TIER Credit:			
11	Add'l Smelter Reg Asset Amortization/(Add Back)	n/a	$ (1,051)	
12	2020 Member Bill Credits	n/a	-	

Note: TIER based on 2019 long-term debt interest expense = $ 37,144

Rural vs. Large Industrial Allocation of Member Bill Credits

Line	Description	Total (c)	Rural (d)	Large Industrial (e)
1	2019 Total Member Revenue ($)	$ 256,280	$ 195,140	$ 61,140
2	Less: Economic Development and Non-FAC	(2,500)	-	(2,500)
3	2019 Revenue for MRSM Purposes ($)	$ 253,780	$ 195,140	$ 58,640
4	2019 Revenue for MRSM Purposes (%)		76.9%	23.1%
5				
6	2019 TIER Credit to be Billed in 2020 MRSM	$ -	$ -	$ -
7				
8	2020 Rural Bill Credits ($)		$ -	
9	Number of Rural Members		118,000	
10	Annual MRSM Credit ($/Member)		$ -	
11	Monthly MRSM Credit ($/Member)		$ -	
12				
13	2020 Large Industrial Bill Credits ($)			$ -
14	2020 Sales Excluding EDR & Non-FAC (MWh)			950,000
15	MRSM Credit ($/MWh)			$ -

EXHIBIT 2

Big Rivers Electric Corporation
Table of Contents

Standard Electric Rate Schedules – Terms and Conditions

	Title	Sheet Number	Effective Date	
General Index				
SECTION 1 – Standard Rate Schedules		1		
RDS	Rural Delivery Service	1		[T]
DSM-01	High Efficiency Lighting Replacement Program DISCONTINUED	3	08-06-2018	
DSM-02	ENERGY STAR® Clothes Washer Replacement Incentive Program DISCONTINUED	4	08-06-2018	
DSM-03	ENERGY STAR® Refrigerator Replacement Incentive Program DISCONTINUED	5	08-06-2018	
DSM-04	Residential High Efficiency Heating, Ventilation and Air Conditioning ("HVAC") Program	7	12-12-2018	
DSM-05	Residential Weatherization Program DISCONTINUED	9	12-21-2017	
DSM-06	Touchstone Energy® New Home Program DISCONTINUED	11	08-06-2018	
DSM-07	Residential and Commercial HVAC & Refrigeration Tune-Up Program DISCONTINUED	13	08-06-2018	
DSM-08	Commercial / Industrial High Efficiency Lighting Replacement Incentive Program	15	12-12-2018	
DSM-09	Commercial / Industrial General Energy Efficiency Program DISCONTINUED	17	08-06-2018	
DSM-10	Residential Weatherization Program – Primary Heating Source Non-Electric DISCONTINUED	19	12-21-2017	
DSM-11	Commercial High Efficiency Heating, Ventilation and Air Conditioning ("HVAC") Program	21	12-12-2018	
DSM-12	High Efficiency Outdoor Lighting Program	23	12-12-2018	
DSM-13	Residential Weatherization A La Carte Program DISCONTINUED	23.01	08-06-2018	
DSM-14	Low-Income Weatherization Support Program – Pilot	23.05	11-13-2019	

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

Big Rivers Electric Corporation
Table of Contents

Standard Electric Rate Schedules – Terms and Conditions

	Title	Sheet Number	Effective Date	
SECTION 1 – Standard Rate Schedules (*continued*)				
LIC	Large Industrial Customer	26		**[T]**
CATV	Cable Television Attachment	31	02-01-2014	
QFP	Cogeneration/Small Power Production Purchase – Over 100 KW	39	02-01-2014	
QFS	Cogeneration/Small Power Production Sales – Over 100 KW	42	02-01-2014	
SET	Supplemental Energy Transaction	50	02-01-2014	
SECTION 2 – Adjustment Clauses and Service Riders		52		
CSR	Voluntary Price Curtailable Service Rider	52	02-01-2014	
RRES	Renewable Resource Energy Service	57	02-01-2014	
RA	Rebate Adjustment	59	02-01-2014	
ES	Environmental Surcharge	60	02-01-2014	
FAC	Fuel Adjustment Clause	62	10-30-2016	
MRSM	Member Rate Stability Mechanism	65		**[T]**
US	Unwind Surcredit	70	02-01-2014	
RER	Rural Economic Reserve Rider	72	02-01-2014	
NSNFP	Non-Smelter Non-FAC PPA	76	02-01-2014	

STANDARD RATE - RDS – Rural Delivery Service – (*continued*)

Bill Format (*continued*)

Please see Section 4 – Definitions for certain terms used on this Bill Format.

MRSM ADJUSTMENT					00.00
CURTAILABLE SERVICE RIDER					00.00 [D]
RENEWABLE RESOURCE ENERGY	________	KWh times	$0.00	EQUALS	00.00
ADJUSTMENT	________	KWh times	$0.00	EQUALS	00.00
			TOTAL AMOUNT DUE		$ 00.00

- - - - - - - - LOAD FACTOR - - - - - - -		- - - - - - - - - - POWER FACTOR - - - - - - - - - -			
COIN.	BILLED	BASE	AVERAGE	@ PEAK	MILLS PER KWH
00.00%	00.00%	00.00%	00.00%	00.00%	00.00

DUE IN IMMEDIATELY AVAILABLE FUNDS ON OR BEFORE THE FIRST WORKING DAY AFTER THE 24TH OF THE MONTH

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

STANDARD RATE – LIC – Large Industrial Customer – (*continued*)

Pursuant to the Commission's Order dated __________ ____, 2020, in Case No. 2020-00064, the Monthly Delivery Point Rate at Big Rivers' Large Industrial Customer delivery points, shall be as outlined below. [N] [N] [N]

For service in calendar year 2020, the Monthly Delivery Point Rate for all Large Industrial Customer delivery points shall consist of: [T] [T]

A Demand Charge of:
All kW of billing demand at $10.7150 per kW [T]

plus, [T]

An Energy Charge of:
All kWh per month at $0.038050 per kWh.

For service beginning in the January 2021 service month, the Monthly Delivery Point Rate for all coal mine and oil industry customers and for load served under an Economic Development Rate shall consist of: [N]

A Demand Charge of:
All kW of billing demand at $10.7150 per kW

plus,

An Energy Charge of:
All kWh per month at $0.038050 per kWh.

STANDARD RATE – LIC – Large Industrial Customer – (*continued*)

For service beginning in the January 2021 service month, the Monthly Delivery Point Rate for all Large Industrial Customer delivery points, *excluding* coal mine and oil industry customers and load served under an Economic Development Rate, shall consist of: **[N]**

A Demand Charge of:
All kW of billing demand at $13.4060 per kW

plus,

An Energy Charge of:
All kWh per month at $0.033267 per kWh.

No separate transmission or ancillary services charges shall apply to these rates.

STANDARD RATE – LIC – Large Industrial Customer – (*continued*) **[N]**

Charges:

Each month, each Member Cooperative shall pay on behalf of each of its large industrial customers taking service under this rate schedule a demand charge calculated by multiplying the demand charge by the higher of the maximum integrated metered thirty-minute non-coincident peak demand or the established contact demand, if any, plus an energy charge calculated by multiplying the energy charge by the metered consumption of kWh in that month.

The Following adjustment clauses and riders shall apply to service under this tariff.

Voluntary Price Curtailable Service Rider
Renewable Resource Energy Service
Rebate Adjustment
Environmental Surcharge
Fuel Adjustment Clause
Member Rate Stability Mechanism
Unwind Surcredit
Non-Smelter Non-FAC PPA
Rural Economic Reserve Rider

Billing:

Big Rivers shall bill Member no later than the first working day after the 13th of the month for the previous month's service hereunder for Large Industrial Customers. Member shall pay Big Rivers in immediately available funds on the first working day after the 24th of the month. If Member shall fail to pay any such bill within such prescribed period, Big Rivers may discontinue delivery of electric power and energy hereunder upon five (5) days written notice to Member of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligation of Member to pay the take-or-pay obligation of a particular Large Industrial Customer.

STANDARD RATE – LIC – Large Industrial Customer – (*continued*)

Bill Format (*continued*)

Please see Section 4 – Definitions for certain terms used on this Bill Format.

MRSM ADJUSTMENT						00,000.00
CURTAILABLE SERVICE RIDER						00,000.00
RENEWABLE RESOURCE ENERGY	0,000,000	KWh times	$0.000000	EQUALS		00,000.00
REBATE ADJUSTMENT						00,000.00
ADJUSTMENT	0,000,000	KWh times	$0.000000	EQUALS		00,000.00
				SUBTOTAL	$	00,000.00
				TOTAL AMOUNT DUE	$	00,000.00

[D]

- - - - - - - - LOAD FACTOR - - - - - - -		- - - - - - - - - - POWER FACTOR - - - - - - - - - -			
ACTUAL.	BILLED	BASE	AVERAGE	@ PEAK	MILLS PER KWH
00.00%	00.00%	00.00%	00.00%	00.00%	00.00

DUE IN IMMEDIATELY AVAILABLE FUNDS ON OR BEFORE THE FIRST WORKING DAY AFTER THE 24TH OF THE MONTH

MRSM – Member Rate Stability Mechanism

Applicability:

Applicable in all territory served by Big Rivers' Member Cooperatives.

Availability:

Available pursuant to Section 3 – Special Rules, Terms, and Conditions: Discount Adjustment of this tariff for all service under Standard Rate Schedule RDS and Standard Rate Schedule LIC. **[T]**

Definitions:

Please see Section 4 for definitions common to all tariffs.

For the period through the December 2020 service month: **[T]**

Member Rate Stability Mechanism:

Big Rivers originally established an Economic Reserve of $157 million pursuant to the Commission's Order dated March 6, 2009, in Case No. 2007-00455. Big Rivers shall deposit the transmission revenues it receives from Century-Hawesville into the Economic Reserve through November 30, 2020. The transmission revenues are allocated 79.2% to the Rural class and 20.8% to the Large Industrial class. The MRSM credit will draw from the applicable accounts containing transmission revenues to provide a credit to each Member during a month. The credit owed to the Large Industrial class shall be allocated to each Member based on kWh sales within the Large Industrial class, and the credit owed to the Rural class shall be based on the number of retail customers served by each Member; in each case, however, such change shall be effective only in coordination with the effective date of each Member's corresponding tariff revision.

MRSM – Member Rate Stability Mechanism – (*continued*)

For the period beginning with the January 2021 service month: [N]

Member Rate Stability Mechanism:

Pursuant to the Commission's Order dated __________ ____, 2020, in Case No. 2020-00064, beginning with calendar year 2020, once Big Rivers completes its year-end financial statements after the end of a calendar year, Big Rivers shall record a member rate credit liability equal to 50% of Adjusted Net Margins in excess of a 1.30 Times Interest Earned Ratio ("TIER") for that calendar year ("TIER Credit").

Adjusted Net Margins shall equal Big Rivers' calendar year Net Margins, before the TIER Credit, and after excluding expenses related to "promotional advertising, political advertising, or institutional advertising" as defined in 807 KAR 5:016, lobbying costs, and donations, or to one-time charges related to the amortization of equity headroom. Big Rivers shall, however, include in the calculation of Adjusted Net Margins economic development expenses, promotional advertising expenses, and Touchstone Energy dues in a cumulative annual amount not to exceed four hundred thousand ($400,000).

The TIER Credit will be allocated to the Rural class and the Large Industrial class based on Member revenues during the calendar year, excluding revenue associated with sales under an economic development rate and sales to which Big Rivers' Fuel Adjustment Clause is inapplicable.

The TIER Credit will be credited to Members through the MRSM in equal amounts over the following twelve (12) consecutive months. The credit each month within the Large Industrial class shall be applied to each Member based on kWh sales excluding sales under an economic development rate and sales to which Big Rivers' Fuel Adjustment Clause is inapplicable. The credit each month within the Rural class shall be applied to each Member based on the number of retail customers serviced by each Member.

If Big Rivers is able to fully amortize the balance of the regulatory assets that the Commission authorized Big Rivers to amortize in Case No. 2020-00064, then the TIER Credit shall equal 100% of Adjusted Net Margins in excess of a 1.30 TIER.

MRSM – Member Rate Stability Mechanism – (*continued*)

For the period beginning with the January 2021 service month (*continued*): **[N]**

Smelter Loss Mitigation Regulatory Assets:

Pursuant to the Commission's Order dated __________ ____, 2020, in Case No. 2020-00064, beginning with calendar year 2020, once Big Rivers completes its year-end financial statements after the end of a calendar year, Big Rivers shall record an amortization expense equal to 50% of Adjusted Net Margins in excess of a 1.30 TIER for that calendar year, to be applied against its Smelter Loss Mitigation Regulatory Assets. Big Rivers shall prioritize its amortization of its Smelter Loss Mitigation Regulatory Assets – as defined in, and as authorized by, the Commission's Order in Case No. 2020-00064 – in the following order so as to reduce the specific regulatory assets until fully recovered:

1. Focused Management Audit Expenses,
2. Wilson Station Deferred Depreciation,
3. Coleman Station Deferred Depreciation,
4. Reid Station Unit 1 Regulatory Asset,
5. Station Two Regulatory Asset, *and*
6. Coleman Station Regulatory Asset.

MRSM – Member Rate Stability Mechanism – (*continued*)

[T]

Tariff Sheet CANCELLED

Reserved for Future Use

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