

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR ANNUAL	)	CASE NO.
REVIEW OF ITS MRSM CHARGE FOR	)	2023-00038
CALENDAR YEAR 2022	)	

ORDER

On October 8, 2023, Big Rivers Electric Corporation (BREC) filed a motion, pursuant to KRS 278.400, requesting clarification of the Order entered October 3, 2023, regarding the use of the TIER Credit Regulatory Liability amount to reduce the smelter loss mitigation regulatory assets (SLM Regulatory Assets).

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup> An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

---

<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>2</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### MOTION

The motion requested clarification of the appropriate minimum balance of the TIER Credit Regulatory Liability that is established to offset the SLM Regulatory Assets and the appropriate amount to reduce the SLM Regulatory Assets. The final Order approved BREC's request to utilize \$17.6 million of the regulatory liability, based on the \$9 million minimum balance, and also approved BREC's request to increase the minimum balance to \$11.3 million, to account for increased interest expense. BREC stated that these approvals appear to be inconsistent, in that the increased minimum balance would decrease the amount of the regulatory liability available to offset the regulatory assets.

### DISCUSSION AND FINDINGS

It was the Commission's understanding that the increased minimum balance would apply to 2023 and going forward, predominantly because the increased debt was secured on June 20, 2023.<sup>3</sup> Because the amount of the regulatory liability in this proceeding is based on 2022, the Commission did not see these approvals as contradictory. However, the October 3, 2023 Order did not specify when the minimum balance would increase,

---

<sup>3</sup> Case No. 2023-00087, *Electronic Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness* (Ky. PSC May 15, 2023), BREC's Compliance Statement (filed July 25, 2023) (document filed in the post-case correspondence file).

and that ambiguity should be resolved. The Commission clarifies that the regulatory liability minimum balance will be \$11.3 million starting in 2023.

IT IS THEREFORE ORDERED that:

1. BREC's motion for clarification is granted.
2. The following language on page 8 of the October 3, 2023 Order is stricken:

The Commission finds that this request is reasonable and the revised minimum regulatory liability balance will be \$11.3 million.

and replaced with the following language:

The Commission finds that this request is reasonable and the revised minimum regulatory liability balance will be \$11.3 million starting in 2023.

3. The October 3, 2023 Order is clarified that the revised minimum regulatory liability balance will be \$11.3 million starting in 2023.
4. The remainder of the October 3, 2023 Order not in conflict with this Order remains in full force and effect.
5. This matter is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Whitney Kegley  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*John Horne  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Lawrence W Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*Senthia Santana  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304

\*Tyson Kamuf  
Corporate Attorney  
Big Rivers Electric Corporation  
710 West 2nd Street  
P. O. Box 20015  
Owensboro, KY 42304