

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR A GENERAL ADJUSTMENT IN RATES SUPPORTED BY FULLY FORECASTED TEST PERIOD	)	CASE NO.
	)	2013-00199
	)	
	)	

ORDER

By Order issued April 25, 2014 (“Rate Order”), the Commission granted Big Rivers Electric Corporation (“Big Rivers”) a base rate increase to generate additional annual revenues of \$36,159,928. On May 19, 2014, Ben Taylor and Sierra Club (“Sierra Club”), Kentucky Industrial Utility Customers, Inc. (“KIUC”), and the Attorney General for the Commonwealth of Kentucky (“AG”), (collectively “Intervenors”) filed a request for rehearing to: (1) clarify when Big Rivers would begin to use its Rural Economic Reserve (“RER”) fund, and (2) request that the Intervenors be permitted to participate in the management audit process. On May 23, 2014, Big Rivers filed a response in opposition to the Intervenors’ request for rehearing. With this Order, the Commission provides clarification on Big Rivers’ use of the RER fund and authorizes a limited role for the Intervenors’ in the management audit process. Descriptions of the issues raised by the Intervenors and our decisions thereon are discussed as follows.

INTERVENORS’ REHEARING REQUESTS

RER Fund

The Rate Order approved Big Rivers’ request to use its Economic Reserve (“ER”) fund and RER fund to offset 100 percent of the rate increase awarded in this

proceeding. In addition, the Rate Order provided background information regarding the prior establishment of the ER and RER funds and explained that “[u]pon exhaustion of the ER, the MRSM will utilize the RER, a separate fund which was also created at the closing of the Unwind Transaction.” The Rate Order also directed Big Rivers to deposit into the ER fund the transmission revenues it receives from Century Aluminum of Kentucky General Partnership’s (“Century”) Hawesville smelter. In seeking rehearing, the Intervenors state that the ER fund will not be exhausted as long as transmission revenues are deposited into it and, therefore, the Rate Order should be clarified to explain that the RER fund will be drawn upon once the ER funds are insufficient to offset 100 percent of the rate increase awarded in this matter.

In its response to the Intervenors’ request, Big Rivers states that its RER Rider tariff specifies that the RER Rider will be effective in the month in which the ER funds are no longer sufficient to fully fund the credit provided under its Member Rate Stability Mechanism (“MRSM”) tariff. Big Rivers states that it does not believe the Commission intended its statement that the MRSM would utilize the RER funds “[u]pon exhaustion of the ER” to require a change in the MRSM and RER Rider tariffs already on file with the Commission. Big Rivers argues that its tariff already provides the relief requested by the Intervenors and that rehearing on this issue should be denied.

Based on a review of the record, the Commission finds that Big Rivers’ tariff already provides that the RER Rider will become effective in the month in which the ER fund is insufficient to fully fund the MRSM. Our discussion in the Rate Order of when the RER fund will be drawn upon was not intended to modify the language of the tariff

on this issue. We now clarify that there was no intent to change those tariff provisions and, thus, we grant the Intervenor's request to the extent of this clarification.

#### Management Audit Process

In the Rate Order, the Commission decided to conduct a focused management audit of Big Rivers' efforts to mitigate the impact of losing more than 800 megawatts of load due to the departure from its system of the two aluminum smelters owned by Century. In their rehearing request, the Intervenor's request that they be allowed to participate in the management audit in the same manner that 807 KAR 5:013, Section 4, permits for the utility being audited. Pursuant to this regulation, the utility may comment on: (1) the draft request for proposals ("RFP"); (2) the proposals received in response to the RFP; (3) the consultant's preliminary draft report; and (4) the final draft report. Citing the deviation provision in Section 6 of the regulation, the Intervenor's request that the Commission deviate from the strictures of Section 4 and allow them to comment on the same documents upon which the utility is permitted to comment.

In its response to the Intervenor's request, Big Rivers asserts that granting that request would transform the audit into an adversarial process and allow the Intervenor's to re-litigate issues regarding its mitigation plan. Big Rivers claims that permitting the Intervenor's to comment at various stages of the audit process would unduly disrupt and complicate the audit, increase the audit's length and cost, and distract Big Rivers from pursuing its mitigation plan. Giving the Intervenor's the relief they seek, according to Big Rivers, would cause the consultant performing the audit to take on the role of an adjudicator, as the consultant would be required to consider the comments of the

parties, Big Rivers and the Intervenors, who had opposed each other in this rate proceeding.

Based on a review of the record, the Commission finds that the Intervenors and other interested persons should be afforded an opportunity to participate in the management audit process. The Rate Order stated that an independent consultant, who will be chosen to perform a focused audit of Big Rivers' efforts to mitigate the impact of losing the smelter loads, will review the strategic planning, management, and decision-making of Big Rivers regarding its mitigation efforts. The views and positions of the intervenors on the mitigation efforts will be important contributions to be considered by the consultant in preparing the audit report. Consequently, we will ensure that the consultant selected to perform the audit conducts interviews of the Intervenors and other interested parties, including but not limited to, the two smelter customers who are no longer buying power from Big Rivers' generating units. The consultant will also be directed to be familiar with the relevant issues in this proceeding, as well as those in prior Big Rivers' proceedings, wherein the views of the Intervenors and other interested parties on Big Rivers' mitigation plan have been expressed.

The Commission further finds that a management audit must not be an adversarial proceeding. Granting the Intervenors' request to participate and file comments as the regulation allows the utility to do would create an unreasonable risk of the audit's becoming adversarial in nature. This could unduly complicate and disrupt the audit and also increase its length and cost. Accordingly, we will allow the Intervenors and other interested parties to participate by being interviewed and by submitting to the auditor written comments and documents as often as they choose.

We will deny the Intervenors' request for a deviation from the provisions of 807 KAR 5:013, Section 4, to allow them to participate in the audit process as the utility is permitted pursuant to that section on the regulation.

### OTHER ISSUES

#### Big Rivers' Participation

The Commission considers the forthcoming audits, with its genesis being this contested proceeding, to be atypical in some respects, including the Commission's independence in choosing a consultant for the audit. To guard against any claims of bias or preference, the Commission on its own motion finds that it should deviate from 807 KAR 5:013, Section 4, with respect to affording Big Rivers an opportunity to comment on the proposals received in response to our RFP. In selecting a consultant to perform the audit, only the Commission and Commission Staff will review the proposals received in response to the Commission's RFP. This will ensure that the Commission's selection of a consultant will be entirely independent, thereby eliminating any potential claim that the consultant selection process was unduly influenced by a party to this proceeding. This will be the only deviation from the management audit regulation, meaning that Big Rivers will have an opportunity to provide comments on the chosen consultant's initial work plan as provided by KRS 278.255(4), and on all other matters, at the prescribed intervals, as set out in that regulation.

#### Letter from Century

On May 29, 2014, Century submitted a letter to the Executive Director of the Commission stating that it "has a substantial interest in both past actions regarding the smelters leaving the system...as well as any actions Big Rivers may take going forward

that may impact Century as an energy or transmission customer and as a potential purchaser of the Coleman Generating Station.” Due to this interest, Century requests to participate in the management audit by being allowed to comment on the draft RFP and the proposals received in response to the RFP, participate in interviews, and provide information to the consultant.<sup>1</sup>

Century, which no longer takes power from Big Rivers’ generation, is not a party to this proceeding and lacks standing to seek rehearing or clarification of the Rate Order. However, in recognition of the interest that it has expressed, we will ensure that it is afforded the same opportunity as other interested persons to be interviewed and submit written comments and documents to the auditor.

IT IS THEREFORE ORDERED that:

1. The intervenors’ request for rehearing is granted to the limited extent that the Rate Order is clarified to state that Big Rivers shall begin to draw upon the RER fund when the ER fund is insufficient to fully fund the MRSM.

2. The Intervenor and other interested persons, including but not limited to Century, shall be afforded an opportunity to participate in the management audit by being interviewed and submitting written comments and documents to the auditor. The Intervenor’s request for rehearing for the granting of a deviation from 807 KAR 5:013, Section 4, to participate in the management audit as if they were the utility is denied.

3. The management audit required by our Rate Order shall deviate from 807 KAR 5:013, Section 4, to the limited extent that for this audit Big Rivers shall not be

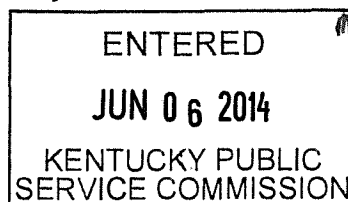
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<sup>1</sup> Century’s request, which is similar to the Intervenor’s request to participate in the management audit, was upon its receipt filed in the record of this proceeding as public comment.

permitted to review and comment on the proposals received in response to the Commission's RFP.

4. All other findings and provisions of the Commission's April 25, 2014 Order shall remain in full force and effect.

By the Commission



ATTEST:

  
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