

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)	2022-00028
CALENDAR YEAR 2021)	

ORDER

On February 28, 2022, Big Rivers Electric Corporation (BREC) filed an application pursuant to the Commission’s Order in Case No. 2020-00064¹ for review of its Member Rate Stability Mechanism (MRSM) Credit for calendar year 2021, as well as information pursuant to the final Orders in Case No. 2019-00365.² The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), requested and was granted intervention on March 3, 2022. BREC responded to one round of discovery.

LEGAL STANDARD

In accordance with KRS 278.303, the legal standard applied to this matter is whether the rates are fair, just and reasonable.³

¹ Case No. 2020-00064, *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* (Ky. PSC June 25, 2020).

² Case No. 2019-000365, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural 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* (Ky. PSC Aug. 17, 2020).

³ KRS 278.030; and *Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010).

BACKGROUND

In Case No. 2020-00064, BREC filed an application with the primary purpose of restoring BREC's investment grade credit ratings by amending its MRSM Tariff, beginning the amortization of the smelter loss mitigation regulatory assets (SLM Regulatory Assets), and receiving approval to take additional steps to mitigate the loss of 850 MW aluminum smelter loads which left BREC's system in 2013-2014. In that proceeding, BREC, Kentucky Industrial Utility Customers, Inc., and the Attorney General filed a unanimous Settlement Agreement, Stipulation, and Recommendation (Settlement Agreement), wherein BREC would provide an annual report starting in 2021 and no later than February 28 of each subsequent calendar year that includes the following identified matters:

- Year-end Times Interest Earned Ratio (TIER) calculation for the prior calendar year;
- The amount of the new TIER Credit that will flow through the MRSM Rider during the following 12 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 the SLM Regulatory Assets;
- Interest savings gained (annualized) once investment grade ratings are received from at least two of the three rating agencies;
- Status of and expected decommission costs of Coleman Station, Reid Station Unit 1, and BREC's estimated share of costs associated with Henderson Municipal Power & Light's (HMP&L) Station Two (Station Two); and
- Copy of any proposal to decommission Coleman Station, Reid Station Unit 1, and Station Two that was awarded in the prior year.⁴

⁴ Case No. 2020-00064, *Big Rivers Electric Corporation* (Ky. PSC June 25, 2020), final Order at 16.

The final Order approved the Settlement Agreement, subject to certain modifications and deletions, as well as clarified the forum for the annual report stating 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.”⁵

In Case No. 2019-00365, BREC and Meade County Rural Electric Cooperative Corporation (Meade County RECC) submitted a joint application seeking approval for the retail contract for electric service between Meade County RECC and Nucor Corporation (Nucor), a related Wholesale Agreement between BREC and Meade County RECC, and establishment of a modified version of the Large Industrial Customer (LIC) Expansion tariff. In approving the application, the Commission directed BREC to file with the annual Case No. 2020-00064 filing, information detailing the financial impacts of the Nucor retail service agreement and the impact the Nucor load has had on BREC’s credit ratings.⁶

BREC’s initial filing in response to Case No. 2020-00064 was docketed in Case No. 2021-00061.⁷ Here, the Commission authorized BREC to use \$11.0 million of the TIER Credit Regulatory Liability amount to reduce the SLM Regulatory Assets and to

⁵ Case No. 2020-00064, *Big Rivers Electric Corporation* (Ky. PSC June 25, 2020), final Order at 21. The Order also required BREC to submit two cost of service studies (COSS) based upon National Association of Regulatory Utility Commissioners (NARUC) approved methods which was filed in Case No. 2021-00061.

⁶ Case No. 2019-00365, *Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation* (Ky. PSC Aug. 17, 2020), ordering paragraph 6.

⁷ Case No. 2021-00061, *Electronic Application of Big Rivers Electric Corporation for Annual Report on MRSM Credit*, (Ky. PSC June 9, 2021).

amortize \$289,407 in expenses incurred in Case No. 2019-00435⁸ over three years and to recover this amount through the environmental surcharge mechanism. The Commission also ordered BREC to continue to file annually, by February 28, an application to adjust its MRSR rates pursuant to Case No. 2020-00064 and to include the information set forth in Case No. 2019-00365.⁹

BREC filed this application to remain in compliance with the final Order in Case No. 2020-00064 and included information and documents related to the matters identified in the Settlement Agreement, BREC's current Member equity balance and the minimum required by its loan covenants, testimony regarding the reasonableness of any 2020 decommissioning costs, and detailed descriptions of all actions BREC has taken to minimize decommissioning costs. This application also included information detailing the financial impacts of the Nucor retail service agreement and the impact the Nucor load has had on BREC's credit ratings. Finally, as BREC was permitted in the final Order in Case No. 2020-00064 to propose adjustments or alterations to the annual filings, BREC proposed that any excess of the regulatory liability above \$9.0 million automatically reduce the SLM Regulatory Assets at year-end as opposed to waiting for explicit approval in the subsequent year.

APPLICATION

Case No. 2020-00064

⁸ Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of Its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge, and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Aug. 6, 2020).

⁹ Case No. 2021-00061, *Big Rivers Electric Corporation* (Ky. PSC June 9, 2021), ordering paragraphs 1, 2, and 3.

In response to the final Order in Case No. 2020-00064, BREC filed responses to the identified matters as follows:

TIER Calculation: BREC's year-end TIER calculation for calendar year 2021 was 2.70 based upon net margins of \$54.1 million.¹⁰ In accordance with Case No. 2020-00064, a TIER Credit of \$44.5 million will move BREC to an overall TIER of 1.30 and net margins of \$9.5 million.¹¹ Further, in accordance with Case No. 2020-00064, 60 percent, or \$26.7 million, of the TIER Credit will be recorded as a regulatory liability to reduce the SLM Regulatory Assets and 40 percent, or \$17.8 million, will flow through the MRSM Rider in 2021.¹²

New TIER Credit: The new TIER Credit, or \$17.8 million, will flow through the MRSM Rider during 2021. The first \$0.7 million is applied to the Rural Delivery Service (RDS) class and the remaining balance is allocated between the RDS class and LIC class based upon their respective 2021 class revenues. This allocation results in an annual allocation of \$14.2 million to the RDS class and \$3.6 million to the LIC class.¹³ The monthly allocations are \$1.2 million for the RDS class and \$0.3 million for the LIC class.¹⁴

Depreciation and Amortization Expenses for the SLM Regulatory Assets: Based on the 2021 TIER Credit, \$26.7 million will be charged to depreciation and amortization expense for recovery of the SLM Regulatory Assets. The amount is first recorded as a regulatory liability and, according to Case No. 2020-00064, any balance that exceeds

¹⁰ Application, Direct Testimony of Paul G. Smith (Smith Testimony) at 8 and Exhibit Smith-2.

¹¹ Smith Testimony at 8 and Exhibit Smith-2.

¹² Smith Testimony at 9 and Exhibit Smith-2.

¹³ Smith Testimony at 9 and Exhibit Smith-2.

¹⁴ Smith Testimony at 9 and Exhibit Smith-3.

\$9.0 million can be applied to the SLM Regulatory Assets. The account balance of \$9.0 million was established in Case No. 2021-00061; therefore, the entire \$26.7 million may be applied to the SLM Regulatory Assets.¹⁵

Status of Amortization of SLM Regulatory Assets: BREC stated that a one-time amortization of \$84.9 million was recorded in 2021 in accordance to Case No. 2020-00064.¹⁶ The \$84.9 million represents 80 percent of Member equity in excess of the amount required under BREC's loan covenants.¹⁷ In January 2021, the SLM Regulatory Assets were also reduced by \$13.0 million and \$11.0 million based on the 2020 TIER Credit Regulatory Liability excess from Case No. 2021-00061.¹⁸ The remaining balance of the SLM Regulatory Assets as of December 31, 2021, was \$281.1 million.¹⁹

Interest Savings Gained (Annualized) Once Investment Grade Ratings are Received from at Least Two of the Three Rating Agencies: In June 2021, BREC received a credit rating upgrade from S&P Global Ratings (S&P).²⁰ This upgrade reestablished investment grade credit ratings from all three rating agencies, which in turn allows for reduced fees on BREC's Revolving Credit Facility with National Rural Utilities Cooperative Finance Corporation. BREC stated that based on this discounted fee structure, an annual interest savings of approximately \$165,000 will be realized.²¹

¹⁵ Smith Testimony at 10.

¹⁶ Smith Testimony at 10.

¹⁷ Smith Testimony at 10.

¹⁸ Smith Testimony at 10–11.

¹⁹ Smith Testimony at 11 and Exhibit Smith-4.

²⁰ Smith Testimony at 11. On June 28, 2021, S&P assigned BREC an investment grade rating of BBB-.

²¹ Smith Testimony at 11.

Regarding the status of and expected decommissioning costs of Coleman Station, Reid Station Unit 1, and BREC's estimated share of costs associated with Station Two, BREC reported the following:

Coleman Station: BREC stated that the asbestos has been removed from the plant site and the surrounding buildings and demolition of the flue gas desulfurization preparation building has begun.²² The decommissioning is expected to be completed by July 2022 at a cost of \$2.7 million.²³ Also included in the decommissioning will be three coal ash ponds, or Project 13-2 of BREC's 2020 Environmental Compliance Plan.²⁴ The closing of the ash ponds is expected to take five years. Currently, BREC is awaiting the issuance of the final U.S. Environmental Protection Agency Coal Combustion Residual (CCR) regulations for CCR disposal sites to finalize the engineering and begin the competitive bid process. The expectation is a ruling in late 2022.²⁵

Reid Station Unit 1: Retired on September 30, 2020, Reid Station Unit 1 is expected to be fully decommissioned in conjunction with Henderson Station Two. However, due to outstanding issues between BREC and HMP&L,²⁶ the decommissioning process has been delayed.²⁷ BREC has proceeded with certain decommissioning

²² Direct Testimony of Nathaniel A. Berry (Berry Testimony) at 4.

²³ Berry Testimony at 4–5.

²⁴ See Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of Its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Sept. 11, 2020).

²⁵ Direct Testimony of Michael S. Mizell (Mizell Testimony) at 4.

²⁶ See Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Aug. 2, 2021) and Case No. 2021-00378, *Big Rivers Electric Corporation Application for Enforcement of Commission Order* (filed Sept. 29, 2021).

²⁷ Berry Testimony at 6.

activities to make the unit “dry, dark, and safe” such as the removal of asbestos and insulation which was completed in September 2021 at a cost of \$0.8 million.²⁸

Station Two: Work has begun to transition the plant into a “safe, dark, and dry” status; however, certain decommissioning activities cannot begin due to the outstanding issues between BREC and HMP&L that are the subject of Case Nos. 2019-00269 and 2021-00378 are resolved. A contract was awarded at a total cost of \$1.1 million for the removal of insulation and asbestos abatement. As part of the decommissioning of Station Two, closure of the ash pond must occur by April 2024. Engineering and geotechnical work associated with the ash pond closure began in 2021 and is expected to be completed in December of 2022 with actual closure construction commencing shortly thereafter to meet the EPA mandated closure date.²⁹ BREC anticipates to share in the costs to fully decommission Station Two, including the Station Two ash pond, the ash pond dredgings in the Green landfill, and all other joint use facilities.³⁰

Awarded Proposals for Decommissioning: No new proposals for decommissioning of the Coleman Station or Reid Station Unit 1 were awarded in 2021. The proposal for insulation and asbestos removal and demolition at Station Two was awarded and approved by the Henderson Utility Commission at a total cost of \$1.1 million.³¹ This contract is limited and excludes the decommissioning costs associated with the closure

²⁸ Berry Testimony at 5–6.

²⁹ Mizell Testimony at 5–6.

³⁰ Berry Testimony at 8.

³¹ Berry Testimony at 9–10. See Berry Testimony, Exhibit Berry-2 for a copy of the awarded proposal.

and monitoring of the ash pond, costs associated with HMP&L's use of the landfill, and other landfill expenses.

Case No. 2019-00365

The final Order in Case No. 2019-00365 required BREC to provide information detailing the financial impacts of the Nucor electric service agreement and the impact the Nucor load has had on BREC's credit ratings. Since the Nucor facility is still under construction, service under the retail service agreement approved in Case No. 2019-00365 has not yet begun.³² During this construction phase, Nucor takes service through a Meade County RECC tariff under BREC's RDS tariff and the financial impacts have been minimal. BREC received an upgrade in the S&P in June 2021 to an investment grade rating of BBB-. Additionally, S&P's Rating Action report noted that the additional Nucor sales reduced market exposure to modest, single-digit percentage levels.³³

DISCUSSION

The Commission recognizes that approval of the Settlement Agreement as well as BREC's mitigation efforts enabled BREC to regain a third investment grade rating. Additionally, it is apparent that the new TIER Credit is operating as envisioned in Case No. 2020-00064 and has resulted in savings to BREC's end-use customers. Therefore, the Commission finds that, at this time, no adjustments or modifications to the MRSM tariff are warranted. Additionally, the Commission finds that applying the \$26.7 million above the \$9.0 million TIER Credit Regulatory Liability should be approved because it

³² Smith Testimony at 13.

³³ Smith Testimony at 13.

further supports the reduction of the SLM Regulatory Assets. The SLM Regulatory Assets have been reduced from \$281.1 million in December 2021 to \$254.4 million.³⁴

Regarding the decommissioning activities, the Commission finds them to be proactive and the costs associated with them to be reasonable. The Commission urges BREC to continue competitive bidding for the decommissioning activities, to continue searching for least cost alternatives and reuse of assets, and to continue ensuring that the decommissioning process includes only reasonable measures necessary and appropriate for continued environmental compliance and appropriate reuse of the site.

For the proposed adjustment to the annual filings, BREC asked that the amounts in excess of the \$9.0 million regulatory liability be automatically deducted from the SLM Regulatory Assets. BREC stated that this is for timing purposes and due to not projecting a TIER of less than 1.30 in the foreseeable future, requiring approval only delays reducing the SLM Regulatory Assets until the following calendar year.³⁵ Although the Commission recognizes BREC's reasoning for the request, the Commission finds that the process as established in Case No. 2020-00064 should be maintained at this time but will reevaluate if such a proposal is proposed in subsequent filings.

IT IS THEREFORE ORDERED that:

1. BREC is authorized to use \$26.7 million of the TIER Credit Regulatory Liability amount to reduce the SLM Regulatory Assets.

³⁴ Smith Testimony, Exhibit Smith-4. Including the regulatory liability of \$9.0 million reduces the SLM Regulatory Assets to \$245.4 million.

³⁵ BREC's Response to Staff's First Request for Information (filed Mar. 31, 2022), Item 1.

2. BREC's proposed modification to automatically utilize the regulatory liability amount in excess of \$9.0 million minimum to annually reduce the balance of the SLM Regulatory Assets is denied.

3. BREC shall continue to file annually, by February 28, an application to adjust its MRSM rates pursuant to ordering paragraph 10 of the June 25, 2020 Order in Case No. 2020-00064. The filing shall contain the information set forth in the June 25, 2020 Order in Case No. 2020-00064 and ordering paragraph 6 of the August 17, 2020 Order in Case No. 2019-00365.

4. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION



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ATTEST:



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