**COMMONWEALTH OF KENTUCKY**
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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| 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 |

# POST-HEARING BRIEF OF BIG RIVERS ELECTRIC CORPORATION

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

## I. INTRODUCTION

Following a long endeavor to overcome the financial difficulty caused by the loss of native load of two large aluminum smelters, Big Rivers filed its Application in this proceeding as a "capstone" to the achievements of its Load Concentration Analysis and Mitigation Plan (the "Mitigation Plan"). Based on Big Rivers' aggressive and successful execution of the Mitigation Plan and implementation of the recommendations included in the Focused Management Audit, Big Rivers has not sought to increase its base rates since 2013, and yet it has greatly improved its financial profile following the loss of the smelter load. While Big Rivers is committed to continuing to pursue strategies to improve its financial stability and keep its rates as low as possible,[1] the relief proposed in the Settlement Agreement will allow Big

[1] *See* Settlement Agreement, at ¶ 14, 15.

Rivers to take the final leap forward in the wake of the smelter load loss – regaining its investment grade credit ratings – while simultaneously sharing the short- and long-term benefit of these achievements with its Members.

Thus, it is imperative that the Commission approve the Settlement Agreement as proposed by the Parties because the relief contained therein was negotiated to give Big Rivers the best opportunity to regain its investment grade credit ratings by maintaining a 1.30 TIER (anything less would be a credit negative for the credit rating agencies), right-sizing Big Rivers' generation facilities, and authorizing recovery of the significant regulatory assets that have been accrued as a result of the loss of the smelter load. Importantly, the relief included in the Settlement Agreement allows Big Rivers to accomplish its goals (1) without needing to increase base rates; (2) by bringing Big Rivers back into compliance with its loan covenants with Rural Utilities Service ("RUS"); and (3) by continuing to provide a monthly bill credit to its Members (which is expected to reduce energy costs in 2021).

Accordingly, the Commission should approve the Settlement Agreement without change as the result is fair, just, and reasonable.

## II. <u>FACTUAL BACKGROUND</u>

As the Commission is aware, in 2013 the first of two large smelter customers left Big Rivers' system. In 2014, the second smelter exited Big Rivers' system. With those departures, Big Rivers lost more than half of its total native load. Losing that magnitude of native load imposed obvious and significant negative financial consequences.

Since the loss of the smelter load, Big Rivers has continued implementing the Mitigation Plan and worked towards achieving the objectives identified in the Focused Management Audit. These efforts have included seeking base rate increases (but none since the 2013 case); marketing excess power on the short-term, mid-term, and long-term when market prices were favorable; executing bilateral sales agreements and wholesale power contracts; supporting expansion of existing load on Big Rivers' system; attracting new industrial load to Big Rivers' service territory; and reducing costs and optimizing existing assets. These strategies have improved Big Rivers' financial stability and positioned it to offer its Members the considerable short-term and long-term benefits provided by the relief proposed in the Settlement Agreement.

Big Rivers has not yet fully achieved its financial recovery following the loss of the smelter load, however. Rather, there is one critical goal that Big Rivers still needs to achieve: regaining investment grade credit ratings. While Big Rivers has achieved an investment grade credit rating from one of the credit rating agencies, Big Rivers continues to aggressively seek an upgrade from the other two credit rating agencies, an achievement that would bring Big Rivers into compliance with its RUS-imposed loan covenants and allow Big Rivers to further decrease its interest expenses.

## III. <u>The Settlement Agreement Should be Approved Without Change</u>

The Settlement Agreement should be approved without change because it will provide the continued regulatory support and financial metrics that Big Rivers needs to regain its investment grade credit ratings, while simultaneously providing a significant amount of benefits to Big Rivers' Members (and ultimately, the customers served by Big Rivers' Members). The relief included in the Settlement Agreement provides a "package" of benefits, which was agreed upon by all of the parties after significant negotiations, and these benefits must be viewed in their totality as the individual provisions work together to accomplish the goals of Big Rivers regaining its investment grade credit ratings; fully recovering the Smelter Loss Mitigation Regulatory Assets[2]; and keeping Big Rivers' Members' energy costs as low as possible.[3]

### 1. Approval of the Settlement Agreement Will Give Big Rivers the Best Opportunity to Regain its Investment Grade Credit Ratings.

A primary purpose of Big Rivers' regaining its investment grade credit ratings is to bring it into compliance with its RUS debt covenants, which require Big Rivers to maintain <u>at least two</u> investment grade credit ratings.[4] Big Rivers is currently operating under a Corrective Action Plan that subjects it to the risk of RUS directing that all of its assets be placed in a "Lockbox" and essentially taking over Big Rivers, even if Big Rivers is in compliance with the Corrective Action Plan.[5] The only way to

[2] The Smelter Loss Mitigation Regulatory Assets consist of the following regulatory assets: Station Two Retirement Costs, Coleman Station Regulatory Asset, Coleman Station Depreciation Deferral, Reid Station Unit 1 Regulatory Asset, Wilson Station Depreciation Deferral, Focused Management Audit Expenses. Big Rivers' Application, at ¶¶ 62, 63.

[3] *See Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) ("Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling."); *Colo. Interstate Gas Co. v. Cases*, 390 U.S. 747 (1968) (finding that ratemaker must ensure that individual components of ratemaking decisions "do not together produce arbitrary or unreasonable consequences"); *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493 (Ky. 1998) ("[T]here is no litmus test for establishing fair, just and reasonable rates, and there is no single prescribed method for accomplishing that goal.").

[4] Direct Testimony of Robert W. Berry, at 26.

[5] *Id.*

remove this risk is to regain at least two investment grade credit ratings. Thus, regaining its investment grade credit ratings is imperative to Big Rivers' financial future by removing the specter of default on its RUS loans.

Even if RUS does not institute the Lockbox under the current loan agreement, Big Rivers must have the ability to borrow funds in the future. RUS is one of Big Rivers' largest lenders, and it offers Big Rivers the lowest borrowing costs. As was discussed during the hearing, Big Rivers plans to refinance an existing loan with RUS, as well as apply for additional loans in the near-future. Therefore, coming into compliance with the loan covenants imposed by RUS will allow Big Rivers to strengthen that relationship and thereby help Big Rivers take steps that will further benefit its Members through reduced borrowing costs. The importance of fostering this relationship and meeting all debt covenants is especially important in the context of an upcoming presidential election, where any administration change could lead to less favorable lending conditions for Big Rivers, especially considering Big Rivers' concentration of coal-fired generation.

Second, regaining an investment grade credit rating is the final step to Big Rivers' financial recovery following the loss of the smelter load. Not only will regaining its investment grade credit ratings allow Big Rivers to fully implement its Mitigation Plan, it will also ensure Big Rivers' rates stay as low as possible. Indeed, if the Settlement Agreement is approved without change, Big Rivers' Members will see reduced energy costs in 2021.

Decreased borrowing expenses will help forestall a base rate increase, while also increasing the likelihood that the Members will receive a Monthly Bill Credit under the New TIER Credit. Simply put, as interest expenses decrease, the amount of net margins needed to achieve a 1.30 TIER correspondingly decreases. Thus, if Big Rivers achieves reduced interest expenses – including by refinancing its pollution control bonds and RUS note after achieving at least two investment grade credit ratings – Big Rivers' Members are more likely to see reduced energy costs through implementation of the proposed Monthly Bill Credit.

Therefore, it is important that the Commission approve the Settlement Agreement as negotiated by the parties, including authorizing the New TIER Credit based upon at least a 1.30 TIER, which the credit rating agencies have already indicated would be viewed as a credit positive. Conversely, as Daniel M. Walker testified during the hearing, if the New TIER Credit were based on an amount below a 1.30 TIER, Big Rivers cannot expect to achieve investment grade credit ratings "during [his] lifetime." In fact, in Big Rivers' last rate case, the Commission agreed with this sentiment when it refused to adopt the Attorney General's recommendation to only authorize a 1.10 TIER.[6] Further, as Mr. Walker explained in his Direct Testimony, continuing to earn a 1.30 TIER is important because credit rating agencies view cooperatives holistically, and a reduction in retained equity, being the

[6] *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, at 31 (Apr. 25, 2014) ("The Commission finds the AG's proposal for setting Big Rivers' TIER to be unreasonable. It is inappropriate to base a cooperative's revenue requirement on the minimum TIER it is required to achieve in order to be in compliance with its mortgage or other controlling loan agreement. . . . As we stated in the 535 Rate Order, the use of a minimum coverage ratio will provide no 'cushion' in the event of an unexpected decline in revenues or unavoidable increase in expenses.").

difference between a 1.30 and 1.10 TIER, would be viewed as a credit negative.[7] If the Commission rejects or modifies the Settlement Agreement in a way that the ratings agencies or RUS view as credit negative, Big Rivers may find itself unable to access low cost funds from RUS and with limited, if any, access to the capital markets. Accordingly, to ensure that Big Rivers regains its investment grade credit ratings, it is vital that the New TIER Credit be determined by utilizing at least a 1.30 TIER, which is consistent with the TIER level approved in Big Rivers' last rate case (and also lower than both the 1.50 TIER approved for East Kentucky Power Cooperative and the 1.45 TIER used when recently implementing Big Rivers' Station Two TIER Credit).[8]

**2. Approval of the Settlement Agreement Will Allow Big Rivers to Fully Recover the Smelter Loss Mitigation Regulatory Assets.**

Approval of the relief requested in the Settlement Agreement is also vital to Big Rivers' financial stability because it will ensure that Big Rivers is able to fully recover the Smelter Loss Mitigation Regulatory Assets before expiration of the Member all-requirements contracts at the end of 2043. Big Rivers' significant regulatory asset balance has been a significant concern for the credit rating agencies, and the proposed plan to systematically and expeditiously recover the Smelter Loss Mitigation Regulatory Assets is likely to be viewed as a credit positive.[9] Alternatively,

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[7] Direct Testimony of Daniel M. Walker, at 16.
[8] *See In the Matter of: Application of East Kentucky Power Cooperative, Inc. for General Adjustment of Electric* Rates, Case No. 2010-00167, Order, at 19 (Jan. 14, 2011); *In the Matter of: Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset*, Case No. 2018-00146, Order (Oct. 23, 2018).
[9] *See* Supplemental Direct Testimony of Paul G. Smith, at 13-15.

accruing fifty percent of net margins above a 1.30 TIER into a regulatory liability account is not expected to be viewed as positively by the credit rating agencies because the regulatory asset balance will not decrease as quickly and uncertainty would be created about future use of the regulatory liability.[10] Big Rivers is proposing to absorb the significant cost of expedited recovery of the Smelter Loss Mitigation Regulatory Assets without seeking a base rate increase, a significant benefit to its Members.

Further, the Settlement Agreement will result in an almost immediate and significant reduction in the Smelter Loss Mitigation Regulatory Assets. This is accomplished primarily through Big Rivers' voluntary commitment to utilize approximately $91 million in Member Equity to offset the current balance of the Smelter Loss Mitigation Regulatory Assets.[11]

Additionally, the parties' unanimous decision to propose utilizing the DSM regulatory liability balance to reduce the Smelter Loss Mitigation Regulatory Assets should be approved without change because the new <u>annual</u> benefits that the Rural customers will receive under the Settlement Agreement – including the receipt of the Monthly Bill Credit on a "per customer" basis – far surpass a <u>one-time</u> utilization of that DSM regulatory liability.[12] This is especially true when considering that the

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[10] *See* Supplemental Direct Testimony of Paul G. Smith, at 13-16; Direct Testimony of Daniel M. Walker, at 19-21.
[11] *See* Settlement Agreement, at ¶ 10.
[12] The one-time DSM benefit would likely otherwise have been approximately $7.00 per Rural customer, given the approximately 100,000 qualifying Rural customers and the approximately $700,000 anticipated regulatory liability balance. *See* Big Rivers' Post-Hearing Request for Information Item 1 (responding that the accrued DSM regulatory liability equals $704,839.13); Kenergy Corp.'s 2019 Annual Report (identifying 46,644 Rural members), available at: https://psc.ky.gov/ufr_pdf/Electric/2019/2000100_Kenergy_Corp.pdf; Jackson Purchase Energy

alternative was to seek an immediate base rate increase that would most certainly have also sought a TIER in excess of 1.30.

### 3. Approval of the Settlement Agreement Ensures that Big Rivers' Rates Remain Fair, Just, and Reasonable.

Finally, approval of the Settlement Agreement will ensure that Big Rivers' rates remain fair, just, and reasonable. Indeed, the Settlement Agreement does not seek to modify Big Rivers' base rates, implement changes to its revenue requirement, or to recover expenses not previously authorized by the Commission. Rather, Big Rivers seeks only to revise its MRSM Tariff to change the methodology for how bill credits are provided to its Members. As proposed in the Settlement Agreement, the revised tariff is forecasted to produce a larger monthly bill credit in 2021 than 2020 while also contributing amounts towards the full amortization of the Smelter Loss Mitigation Regulatory Assets by the expiration of the Members' all-requirements contracts.[13]

Thus, the Commission should approve inclusion of up to $400,000 of "Regulatory Exclusions"[14] in the New TIER Credit, as requested as a product of the parties' settlement negotiations and unanimous recommendation. Inclusion of these expenses for determining the amount of New TIER Credit will not change the fact that these expenses were excluded from Big Rivers' revenue requirement when

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Corporation's 2019 Annual Report (identifying 25,511 Rural members), available at: https://psc.ky.gov/ufr_pdf/Electric/2019/2400_Jackson_Purchase_Energy_Corporation.pdf; Meade County RECC's 2019 Annual Report (identifying 27,761 Rural members), available at: https://psc.ky.gov/ufr_pdf/Electric/2019/2600_Meade_County_RECC.pdf.

[13] Member Bill Impact, Exhibit 6 to the Direct Testimony of Paul G. Smith. That is, the New TIER Credit provides an increased credit on Member bills, ultimately benefitting the Member's customers.

[14] The Regulatory Exclusions include only economic development expenses, promotional advertising, and Touchstone Energy dues. *See* Settlement Agreement, at ¶ 4.

setting Big Rivers' current base rates. That is, approval of this element of the Settlement Agreement does not result in the inclusion of these expenses in Big Rivers' base rates. Instead, approval of the Regulatory Exclusions simply recognizes that these type of expenses provide tangible benefits to Big Rivers' Members and should be encouraged. For example, the economic development expenses have been important to Big Rivers' efforts to grow its native load, including the Nucor load, and the Touchstone Energy dues (among other benefits) provide access to membership satisfaction survey information, which allows Big Rivers' Members to ensure they are providing the best service possible. Approval of the Regulatory Exclusion expenses to encourage Big Rivers to continue providing these substantial benefits to its Members is especially warranted when considering Big Rivers' willingness to absorb incremental annual depreciation and amortization costs of approximately $33 million without a base rate increase.

Finally, Big Rivers has committed to significant annual reporting in this proceeding, which will allow all interested stakeholders, including the Commission, KIUC, and the Attorney General, to review the ongoing success and implementation of the relief proposed in the Settlement Agreement.[15] This transparency into and oversight of the relief included in the Settlement Agreement allows all interested stakeholders to ensure that Big Rivers' rates remain fair, just, and reasonable; moreover, any refinements to any aspect of the New TIER Credit that may become appropriate in the future can be achieved through a revision to the MRSM tariff after

[15] *See* Settlement Agreement, at ¶ 13.

Big Rivers has regained its investment grade credit ratings and come into compliance with the RUS loan covenants. If, for example, it became apparent in ten years that the Smelter Loss Mitigation Regulatory Assets were not being amortized quickly enough, the MRSM tariff could be revised at that time to provide an adjustment of the New TIER Credit percentage allocations in order to increase the amortization of the Smelter Loss Mitigation Regulatory Assets.

Accordingly, in recognition of the sound leadership and decisions that Big Rivers has exhibited in implementing the Mitigation Plan, and with the knowledge that the Settlement Agreement allows for ongoing and informed oversight, the Commission should approve this important step forward in Big Rivers' history, which will allow Big Rivers the opportunity to join every other rated G&T cooperative in the country by regaining its investment grade credit ratings.

## IV. CONCLUSION

Over the last seven years, Big Rivers has aggressively pursued the strategies within its Mitigation Plan. This has led to the rapid improvement of its financial stability, and it has put Big Rivers on the cusp of achieving the final step of its financial recovery – unanimous investment grade credit ratings. Big Rivers has put a considerable amount of time and thought into the relief requested in this proceeding. Not only will it allow Big Rivers the best opportunity to achieve the milestone of regaining its investment grade credit ratings, it will allow Big Rivers to return considerable benefits to its Members through recovery of the Smelter Loss Mitigation Regulatory Assets and the Monthly Bill Credit. The relief negotiated and recommended unanimously by Big Rivers, the Attorney General, and KIUC allows all of these benefits to be provided without a base rate increase. Accordingly, Big Rivers respectfully requests that the Commission continue its steadfast regulatory support of Big Rivers and its Members by approving the Settlement Agreement without change.

This 16th day of June, 2020.

Respectfully submitted,

**BIG RIVERS ELECTRIC CORPORATION**


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## Certification

I hereby certify that the electronic version of this filing made with the Commission on June 16, 2020, is a true and accurate copy of the paper document that will be submitted to the Commission within 30 days of the Governor lifting the state of the emergency pursuant to the Commission's Orders in Case No. 2020-00085, and the electronic version of the filing has been transmitted to the Commission. A copy of this filing has been served electronically on all parties of record for whom an email address is given in the online Service List for this proceeding, and there are currently no parties that the Commission has excused from participation by electronic means.

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