

1 COMMONWEALTH OF KENTUCKY
2 BEFORE THE PUBLIC SERVICE COMMISSION
3

4 In the Matter of:
5

ELECTRONIC APPLICATION OF)	Case No.
BIG RIVERS ELECTRIC CORPORATION)	2021-00061
FOR ANNUAL REPORT ON MRSM CREDIT)	

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8 **JOINT RECOMMENDATIONS AND MOTION FOR A DECISION ON THE**
9 **EXISTING RECORD**
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11 1. The Attorney General of the Commonwealth of Kentucky, through
12 his Office of Rate Intervention (the “*Attorney General*”), Kentucky Industrial
13 Utility Customers, Inc. (“*KIUC*”), and Big Rivers Electric Corporation (“*Big*
14 *Rivers*”) hereby file these joint recommendations and respectfully move the
15 Kentucky Public Service Commission (the “*Commission*”)¹ to submit this
16 proceeding for a decision based on the existing record.

17 **Background**

18 2. On February 28, 2020, Big Rivers filed its application in Case No.
19 2020-00064, as the culmination of its efforts to mitigate the loss of two large
20 aluminum smelters by executing on its Load Concentration Analysis and

¹ The Attorney General, KIUC, and Big Rivers may collectively be referred to herein as the “*Parties*.”

1 Mitigation Plan (the “*Mitigation Plan*”), and to pass through to its Members²
2 short- and long-term benefits resulting from the successful implementation of the
3 Mitigation Plan.³

4 3. The Mitigation Plan was developed to alleviate the substantial risk
5 of having the two large aluminum smelters, comprising more than one-half of its
6 native load, located within its service territory. Once the smelters announced
7 their departure from the Big Rivers system in 2012 and 2013, Big Rivers put the
8 Mitigation Plan into action to address the financial impact the loss of the smelters
9 represented (including not just the loss of revenue but also having significant
10 excess capacity and losing all three of Big Rivers’ investment grade credit
11 ratings). Those efforts included cutting costs, filing two rate cases, reducing
12 uneconomic generation (including idling and then retiring the Coleman Station
13 and Reid Unit 1, and exiting the Station Two Contracts), finding new markets for
14 the excess power (including customers in Nebraska and Missouri, Owensboro
15 Municipal Utilities, and the Kentucky Municipal Energy Agency), and ultimately
16 expanding native load (including the economic development expansion at the
17 Aleris facility and Nucor locating a new steel mill in one of Big Rivers’ Members’

² Big Rivers’ Member-Owners are Jackson Purchase Energy Corporation (“*JPEC*”), Kenergy Corp. (“*Kenergy*”), and Meade County Rural Electric Cooperative Corporation (“*MCRECC*”) (collectively, the “*Members*”).

³ See *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*, P.S.C. Case No. 2020-00064, Big Rivers’ Application (filed February 28, 2020).

1 territory).⁴

2 4. While Big Rivers will continue its efforts to expand native load, the
3 last step to financial stability was for Big Rivers to regain its investment grade
4 credit rating. Big Rivers filed Case No. 2020-00064 with the expectation that if
5 the Commission granted the relief it was seeking (including addressing Big
6 Rivers' growing regulatory asset balance), Big Rivers would regain that rating.⁵

7 5. The Attorney General, KIUC, and Big Rivers entered into a
8 unanimous settlement agreement in Case No. 2020-00064 (the "*Settlement*
9 *Agreement*") that ensured Big Rivers would recover the balance of the various
10 regulatory accounts, while at the same time providing rate stability for Big Rivers
11 and bill credits to its Members through a new TIER Credit mechanism, all
12 without increasing base rates. More specifically, the Settlement Agreement, as
13 modified by the Commission, authorized Big Rivers to, among other things:

- 14 • cease deferring Wilson Station depreciation expense and instead recover
15 that expense through existing rates;
- 16 • retire the Coleman Station and Reid Unit 1, and defer in a regulatory asset
17 the retirement and decommissioning costs;
- 18 • utilize 80% of its equity headroom to reduce the balance of various
19 regulatory assets (the "*Smelter Loss Mitigation Regulatory Assets*" or "*SLM*
20 *Regulatory Assets*"), including the regulatory assets for the deferred

⁴ See *id.*

⁵ See *id.*

1 depreciation expense for the Wilson and Coleman Stations, the regulatory
2 asset related to Big Rivers' unrecovered investment in Station Two, and the
3 regulatory assets for the retirement and decommissioning costs of Coleman
4 Station and Reid Unit 1;

- 5 • recover the remaining balance of the SLM Regulatory Assets through
6 existing rates over the remaining life of the Members' "all-requirements"
7 contracts (through the end of 2043);
- 8 • establish the new TIER Credit, which would pass back to the Members
9 earnings over the margins required for a 1.30 TIER (40% of the excess
10 margins would be passed back through a bill credit using Big Rivers'
11 Member Rate Stability Mechanism ("*MRSM*") tariff; and the remaining
12 60% of the excess margins would be deferred in a regulatory liability (the
13 "*TIER Credit Regulatory Liability*") that could be used, with Commission
14 approval, to speed up paying off the SLM Regulatory Assets); and
- 15 • utilize the TIER Credit Regulatory Liability one time if necessary to
16 achieve a TIER of 1.30, which protects Big Rivers in the event of
17 unforeseen circumstances and, consequently, increases its credit
18 worthiness.⁶

19 6. Big Rivers filed its application in this matter pursuant to the
20 Settlement Agreement and the Commission's final Order in Case No. 2020-00064
21 (the "*June 25, 2020, Order*"), to report on the operation of the TIER Credit and

⁶ See *id.*, P.S.C. Order (June 25, 2020).

1 the MRSM tariff. Big Rivers’ application also provided information in response to
2 the Commission’s final Order in Case No. 2019-00435 in support of its request to
3 recover the costs it incurred to prepare and prosecute that case, which sought,
4 among other things, approval of Big Rivers’ 2020 Environmental Compliance
5 Plan; it provided information in support of the reasonableness of the
6 decommissioning costs incurred up to that point; and it provided information
7 detailing the financial impacts of the Nucor retail service agreement and the
8 impact the Nucor load has had on Big Rivers’ credit ratings, as required by the
9 Commission’s final Order in Case No. 2019-00365.⁷

10 **The Operation and Effect of the new TIER Credit**

11 7. The immediate effect of the support shown by the Attorney General
12 and KIUC through supporting the Settlement Agreement, and shown by the
13 Commission through its approval of the Settlement Agreement (with
14 modifications), in conjunction with Big Rivers’ mitigation efforts, including
15 securing the Nucor load, was Big Rivers regaining its second investment grade
16 rating. In December 2020, Moody’s Investor’s Service (“*Moody’s*”) issued a Rating
17 Action, in which Moody’s assigned a Baa3 rating to Big Rivers’ \$83.3 million
18 senior secured 10-year term loan agreement with National Rural Utilities
19 Cooperative Finance Corporation (“*CFC*”), and noted, among other things:

20 The rating action reflects Moody’s views about Big Rivers’ significant
21 progress in securing replacement loads to create better balance
22 between its available capacity and profile, obtaining Kentucky Public

⁷ Big Rivers’ Application (filed February 26, 2021).

1 Service Commission (KPSC) approval for rate-neutral recovery of
2 costs associated with its sizable regulatory assets and executing to
3 reduce interest expense and mitigate refinancing risk....⁸

4 8. Along with the other benefits it will provide, regaining its
5 investment grade credit rating resulted in Big Rivers recognizing significant
6 annual interest savings of \$157,500 under its 2020 CFC Revolving Credit
7 Facility.⁹

8 9. Further, despite the additional costs and reduced revenues resulting
9 from the COVID-19 pandemic, the new TIER Credit is operating as anticipated by
10 the Parties in the Settlement Agreement, allowing Big Rivers to pass back to its
11 Members over \$13 million in bill credits, which the Members will flow through to
12 their retail customers.

13 10. Big Rivers' 2020 pre-TIER Credit net margins were \$43.5 million,
14 resulting in a pre-TIER Credit TIER of 2.27. The resulting TIER Credit is \$33.3
15 million, \$20.0 million of which has been deferred in the TIER Credit Regulatory
16 Liability, and the remaining \$13.3 million of which, will be the bill credit that is
17 passed back to Members through the MRSM tariff.¹⁰

18 11. Per the Commission's June 25, 2020, Order, the first \$700,000 of the
19 bill credit went to Rural customers, and the remaining bill credit was divided
20 between Rural and Large Industrial customers based on 2020 revenues. In total,

⁸ *Id.*, Direct Testimony of Paul G. Smith, Exhibit Smith-5.

⁹ *Id.*, Exhibit Smith-6.

¹⁰ *Id.*, Exhibit Smith-2.

1 the bill credit for the Rural customers will be \$10.5 million, and the total bill
2 credit for the Large Industrial customers will be \$2.8 million, each divided over 12
3 months.¹¹

4 12. The balance of the SLM Regulatory Assets at the end of 2020 was
5 \$413.4 million. The equity headroom utilization contemplated by the Settlement
6 Agreement reduced the SLM Regulatory Assets by approximately \$85 million, to
7 \$328.4 million; and the utilization of the DSM regulatory liability contemplated
8 by the Settlement Agreement reduced the SLM Regulatory Assets by another \$0.7
9 million, to \$327.7 million. Net of the \$20 million allocated to the TIER Credit
10 Regulatory Liability, and before application of the final Station Two TIER Credit,
11 the balance of the SLM Regulatory Assets was reduced from \$413.4 million to
12 \$307.7 million.¹²

13 13. Application of the final Station Two TIER Credit from the settlement
14 agreement approved by the Commission in Case No. 2018-00146¹³ further
15 reduced this balance by \$27.7 million to \$280 million.¹⁴

¹¹ *Id.*, Exhibit Smith-3.

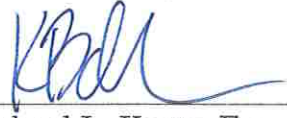
¹² *Id.*, Exhibit Smith-4.

¹³ The Station Two TIER Credit resulted from a settlement agreement among the Attorney General, KIUC, and Big Rivers in Case No. 2018-00146 to pass through to Big Rivers' Members and their retail customers the savings Big Rivers achieved by exiting the Station Two Contracts. *See In the Matter of: Notice of Termination of Contracts and Application of Big Rivers Electric Corporation for a Declaratory Order and for Authority to Establish a Regulatory Asset*, P.S.C. Case No. 2018-00146, Order (Oct. 23, 2018). Absent the Station Two TIER Credit, these savings would have (and will in the future) flow through the new TIER Credit mechanism.

¹⁴ Big Rivers' Application, Direct Testimony of Paul. G. Smith, Exhibit Smith-4.

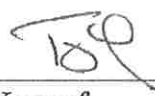
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KENTUCKY INDUSTRIAL UTILITY
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