COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC APPLICATION OF BIG RIVERS ELECTRIC CORPORATION FOR AUTHORITY TO ESTABLISH A REGULATORY ASSET FOR EXPENSES RELATED TO COAL COMBUSTION RESIDUALS RULE	))))))	**Case No. 2022-00201**

APPLICATION

Big Rivers Electric Corporation ("Big Rivers") files this application (the "Application") to the Public Service Commission ("Commission" or "P.S.C."), pursuant to KRS 278.040, KRS 278.220,807 KAR 5:001 Section 14, and other applicable law, seeking an order authorizing Big Rivers to establish a regulatory asset to defer certain expenses Big Rivers has incurred and will continue to incur to comply with the U.S. Environmental Protection Agency's published Disposal of Coal Combustion Residuals from Electric Utilities Rule (the "CCR Final Rule"). In support of its Application, Big Rivers states as follows:

Introduction

1. Big Rivers is a rural electric generating and transmission cooperative corporation that was incorporated in the Commonwealth of Kentucky under KRS Chapter 279 on June 14, 1961, and attests that it is in good standing. Its mailing address is P.O. Box 24, Henderson, Kentucky, 42419-

0024; its street address is 201 Third Street, Henderson, Kentucky 42420; and its electronic mail address is regulatory@bigrivers.com.

2. Big Rivers owns electric generation and transmission facilities, and purchases, transmits and sells electricity at wholesale. Big Rivers exists for the principal purpose of providing the wholesale electricity requirements of its three distribution cooperative members (the "Members"), which are: Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation. The Members in turn provide retail electric service to approximately 119,600 consumer/members located in 22 Western Kentucky counties: Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Union and Webster.

Accounting Impacts of the CCR Final Rule

3. The CCR Final Rule, which was published in the Federal Register on April 17, 2015, deals extensively with coal ash storage and disposal. Big Rivers presently maintains facilities, which are a consequence of Big Rivers' production of energy from coal and are the focus of significant environmental regulation in light of the CCR and other waste materials they contain.[1] In Case

[1] *See* Case No. 2019-00435, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval of its 2020 Environmental Compliance Plan, Authority to Recover Costs through a Revised Economic Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief*, (Project 14); *see also* Case No. 2015-00333, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Authority to Establish Regulatory Assets for Expenses Related to the Coal Combustion Residuals Rule.*

No. 2015-00333, the Commission authorized Big Rivers to establish a regulatory asset for the income statement impacts including gains, losses, depreciation and accretion expense related to the future closure of its Green Station and Station Two ash ponds.[2]

4. Big Rivers' special waste landfill at its D.B. Wilson Station ("Wilson") is also impacted by the CCR Final Rule. The Wilson landfill was constructed in two stand-alone phases, Phase I and Phase II, for the disposal of utility wastes, including CCR. Phase I of the Wilson landfill reached capacity and stopped accepting waste in 2010. Closure of Phase I of the Wilson landfill is underway and is projected to be completed in 2022. Closure of Phase II is not anticipated until at least 2045.

5. Big Rivers will face significant liability with respect to the eventual closure of Phase II of the Wilson landfill. As a result of the impact of the CCR Final Rule on Phase II, the Rural Utilities Service Uniform Systems of Accounts ("RUS USoA") requires Big Rivers to recognize an ARO.

6. AROs are legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development and/or normal operation of such assets. The RUS USoA explains:

> An asset retirement obligation represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory

[2] Case No. 2015-00333, *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Authority to Establish Regulatory Assets for Expenses Related to the Coal Combustion Residuals Rule* (Ky. PSC Jan. 5, 2016).

> estoppel. An asset retirement cost represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.[3]

7. Financial Accounting Standards Board Accounting Standards Codification ("ASC") Topic 410-20, *Asset Retirement Obligations and Environmental Obligations – Asset Retirement Obligation,* likewise requires AROs to be recognized at fair value when incurred and capitalized as part of the related long-lived assets. The liability is accreted to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. When the asset is retired, the entity settles the obligation for its recorded amount or incurs a gain or loss.

Request for Authority to Establish Regulatory Asset

8. Based upon discussions with its financial statement auditors, Big Rivers believed that, at the time, it was premature to establish an asset retirement obligation ("ARO") related to the future closure of Phase II of the Wilson landfill. Subsequently, Big Rivers' auditors took the position that Big Rivers should record an ARO for the closure of Phase II of the Wilson landfill. After additional discussion with its financial statement auditors, Big Rivers and its auditors concluded that the ARO at Wilson should have been recorded in 2015 when the CCR Final Rule became effective. As such, Big Rivers recorded

[3] CFR Section 1767.15, *General Instructions, subpart (y), Accounting for asset retirement obligations.*

the ARO along with the catch-up depreciation and accretion expense in its 2021 books of record, and deferred the depreciation and accretion expense by utilizing a deferred asset from the RUS USoA chart of accounts until such time that Big Rivers can obtain necessary approvals to establish a regulatory asset.

9. In addition to the Commission's approval, Big Rivers needs the approval of RUS[4] to establish a regulatory asset. Big Rivers' letter to RUS requesting its approval to establish a regulatory asset relating to the closure of the Wilson landfill is attached to this Application as Exhibit 1. On June 28, 2022, RUS responded to Big Rivers' request, approving the establishment of a regulatory asset contingent upon the Commission's approval. A copy of RUS' response is attached to this Application as Exhibit 2.

10. Big Rivers continues to record and defer depreciation and accretion expense monthly. Should the Commission deny the request for a regulatory asset, Big Rivers would be required to expense the depreciation and accretion expense that it has deferred and additional depreciation and accretion expense in the future.

11. Based on a study by AECOM dated August 2021, the projected nominal costs to close Phase II of the Wilson landfill are $15.48 million. Using AECOM's projection, Big Rivers calculated the present value of the future retirement obligation for Phase II to be $5.85 million, which is the basis for the initial ARO liability established in Big Rivers' books in 2021. Big Rivers

[4] See 7 C.F.R. § 1767.13.

estimates the timing of closure activities to complete in 2045, one and one-half years after the end of the Members' current all-requirements contracts, for purposes of establishing the ARO. Big Rivers currently does not have a definitive date established for closing this landfill.

12. Big Rivers projects that, at the end of 2022, the ARO-related depreciation expense will have totaled approximately $1.49 million and the ARO-related accretion expenses will have totaled approximately $2.46 million. These are preliminary estimates based on the ARO recorded as of December 31, 2021, and will be subject to prospective adjustment as the underlying cost estimates and timing change based on updated compliance cost estimates.[5]

13. Big Rivers believes the actual ARO settlement costs should be recoverable through appropriate rate mechanisms in the future; however, under present guidance, there will be a mismatch of revenues and expenses in Big Rivers financial statements for years 2021 forward because ARO-related accretion and depreciation expense is required to be recognized monthly (beginning in December 2021), even though those expenses have not yet been

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[5] The RUS USoA requires that a utility initially record a liability for an ARO in Account 230 — Asset Retirement Obligations and charge the associated asset retirement costs to the electric utility plant that gave rise to the legal obligation. The RUS USoA requires the asset retirement cost to be depreciated over the useful life of the related asset that gives rise to the obligation. In periods subsequent to the initial recording of the ARO, the RUS USoA requires the utility to recognize the period-to-period changes of the ARO that result from the passage of time due to the accretion of the liability by recording a debit to Account 411.11 — Accretion Expense, and a credit to Account 230. For any subsequent measurement changes to the initial liability for the legal obligation recorded in Account 230 for each specific ARO, the utility is required to recognize said changes as an adjustment to the liability in Account 230 with a corresponding adjustment to the appropriate electric utility plant account. *See* 1 CFR Section 1767.15, General Instructions, subpart (y), *Accounting for asset retirement obligations*.

incorporated into Big Rivers' rates and any such revenue adjustment will not be made until some future period. The ARO-related expenses, therefore, would reduce Big Rivers' net margins and cause its true financial performance to be understated.

14. Additionally, when Big Rivers' rates are adjusted in the future to incorporate closure costs, Big Rivers' revenues and expenses will then be inflated and will cause its financial performance to be overstated. To avoid these outcomes, Big Rivers asks the Commission to authorize the establishment of a regulatory asset for the ARO-related depreciation expenses and accretion expense.

15. Big Rivers requests that it also be allowed to record as part of the regulatory asset requested herein, any prospective adjustments to the amounts for ARO-related depreciation and accretion expenses associated with the ARO balances existing on December 31, 2021, as changes to the underlying cost estimates and timing will affect these amounts. This treatment will appropriately defer recognition of these ARO expenses until recovery of the actual costs is authorized by the Commission at some point in the future. This will ultimately allow Big Rivers to match its revenues and expenses in each relevant accounting period.

16. The authority of the Commission to allow utilities to establish regulatory assets "arises under the Commission's plenary authority to regulate

utilities under KRS 278.040 and the Commission's authority to establish a system of accounts under KRS 278.220."[6]

17. The Commission has previously authorized other jurisdictional utilities to establish regulatory assets.[7] As the Commission explained:

> Historically, the Commission has exercised its discretion to approve regulatory assets where a utility has incurred: (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.[8]

18. Big Rivers' request to establish regulatory assets for the ARO-related depreciation and accretion expenses falls under the second category, as the ARO-related deprecation and accretion result from the directives of the CCR Final Rule and the accounting requirements of the RUS USoA and ASC Topic 410-20 concerning ARO accounting.

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[6] Case No. 2008-00436, *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset related to Certain Replacement Power Costs Resulting from Generation Forced Outages* (Ky. PSC Dec. 23, 2008), final Order at 4.

[7] *Id.*; *see also* Case No. 2008-00456, *In the Matter of: Application of Louisville Gas and Electric Company for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Dec. 22, 2008).

[8] Case No. 2008-00436, *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset related to Certain Replacement Power Costs Resulting from Generation Forced Outages* (Ky. PSC Dec. 23, 2008), final Order at 4.

19. Moreover, the Commission has previously approved the establishment of regulatory assets for ARO-related deprecation and accretion expenses.[9]

20. Big Rivers respectfully requests a final order in this proceeding no later than December 2022. This timing will allow Big Rivers to complete all internal journal entries as part of the year-end close of its books for the year 2022 no later than January 15, 2023.

21. Based on the foregoing, the Commission should allow Big Rivers to establish a regulatory asset account for ARO-related deprecation and accretion expenses related to the future closure of Phase II of the Wilson landfill.

Conclusion

WHEREFORE, Big Rivers respectfully requests that the Commission enter an order:

a. Approving the establishment of a regulatory asset for the income statement impacts, including gains, losses, accretion and depreciation expenses-associated with the ARO-related liabilities arising from the eventual closure of Phase II of the Wilson landfill; and

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[9] *See* Case No. 2003-00426, *In the Matter of Application of Louisville Gas and Electric Company for an Order Approving an Accounting Adjustment to be Included in Earnings Sharing Mechanism Calculations for 2003* (Ky. PSC Dec. 23, 2003); Case No. 2003-00427, *In the Matter of Application of Kentucky Utilities Company for an Order Approving an Accounting Adjustment to be Included in Earnings Sharing Mechanism Calculations for 2003* (Ky. PSC Dec. 23, 2003).

b. granting all other relief to which Big Rivers may appear to be entitled.

On this 19th day of July, 2022.

Respectfully submitted,

/s/ Senthia Santana

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