

1 Over the past decade, Big Rivers has successfully navigated challenging
2 circumstances, including the monumental 850 MW loss of native load that
3 resulted from two large aluminum smelters exiting the Big Rivers system. Big
4 Rivers has been able to successfully mitigate the smelter load loss by (i) reducing
5 uneconomic generation, and (ii) replacing some of the power previously sold to the
6 smelters with new wholesale contracts providing sales to other utilities, such as
7 Owensboro Municipal Utilities, and by growing native load, principally by
8 securing new economic development projects, including Nucor, Blockware, and
9 Pratt Paper.

10 While the smelter departure did require Big Rivers to file rate cases in
11 2012 and 2013 to offset the resulting loss of approximately 64% of its annual
12 revenues, Big Rivers has not sought an increase of its base rates since the 2013
13 case, and its mitigation efforts have enabled it to recently modify its Member Rate
14 Stability Mechanism (“*MRSM*”) tariff to pass through the resulting short-term
15 and long-term benefits to the retail customers of the Member-Owners in the form
16 of bill credits and reductions in regulatory asset balances that would otherwise
17 need to be recovered through increased base rates.² In 2021 and 2022, Big Rivers
18 provided over \$31 million in bill credits³ under the new *MRSM* tariff and over

² 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, Order (June 25, 2020).

³ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Annual Review of its MRSM Charge for Calendar Year 2021*, P.S.C. Case No. 2022-00028, Order (July 6, 2022), at p. 5 (noting that Big Rivers returned \$17.8 million in bill credits to customers in 2022); *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Annual Report on*

1 \$151 million in regulatory asset reductions.⁴ Another \$11.7 million in bill credits
2 will be applied in 2023,⁵ and the margins that will be utilized to reduce the
3 regulatory asset balances in 2023 are expected to be between \$17.5 million and
4 \$35.1 million.⁶ Attorney General Cameron said of these efforts, “*I applaud*
5 *BREC’s efforts to pursue a modified tariff that returns more money to Kentuckians*
6 *and allows the company to continue rehabilitating its credit, which will provide*
7 *long-term benefits and savings for utility customers.*”⁷

8 The success of Big Rivers’ mitigation plan in securing additional off-system
9 sales and native load growth gave rise to a need for additional power resources.
10 In Case No. 2020-00183, the Commission approved a Power Purchase Agreement
11 (“PPA”) between Big Rivers and Unbridled Solar, LLC (“*Unbridled Solar*”) as the
12 least cost alternative to help meet the requirements of Big Rivers’ native load and
13 off-system sales growth, to fulfill contractual obligations to Nucor, to hedge price
14 risks in the Big Rivers’ power supply portfolio, to support economic development

MRSM Credit, P.S.C. Case No. 2021-00061, Order (June 9, 2021), at p. 5 (noting that Big Rivers returned \$13.3 million in bill credits to customers in 2023).

⁴ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Annual Review of its MRSM Charge for Calendar Year 2022*, P.S.C. Case No. 2023-00038, Application Exhibit B, Direct Testimony of Talina R. Mathews, Exhibit Mathews-4.

⁵ See *id.*, Direct Testimony of Talina R. Mathews, at p. 5.

⁶ The amount of regulatory asset reductions in 2023 is pending PSC approval in Case No. 2023-00038. In 2023, before application of the new TIER credit, Big Rivers will amortize approximately \$4.5 million from the Green Station Regulatory Asset account balance and the remaining Smelter Loss Mitigation regulatory asset account balances by \$13.0 million. See *id.* at pp. 6, 8. Big Rivers has proposed to utilize the regulatory liability to reduce the regulatory assets by another \$17.6 million. See *id.*, Application, at p. 10.

⁷ Elizabeth Kuhn, *\$13.3 Million in Bill Credits Returned to Western Kentucky Utility Customers in Settlement with Attorney General’s Office, Big Rivers Electric Corporation, Kentucky Industrial Utilities Customers*, June 17, 2021, available at <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=1080>.

1 activities, and to mitigate credit risks by diversifying Big Rivers’ power supply
2 portfolio.⁸ Unfortunately, as noted in Big Rivers’ Application, Unbridled Solar
3 was unwilling to move forward with its project absent an amendment to the PPA.⁹
4 The proposed amendment, while not as favorable as the original PPA, continues
5 to meet all the needs identified by the Commission in Case No. 2020-00183; it
6 preserves nearly two-thirds of the value of the original PPA; and it will still
7 provide Big Rivers a long-term, low-cost source of power that will deliver
8 substantial benefits to all of the retail customers of Big Rivers’ Member-Owners.¹⁰

9 **Big Rivers Has Shown Sufficient Need for PPA**

10 The Attorney General acknowledges in his brief that the Commission
11 already found in Case No. 2020-00183 that Big Rivers established a need for the
12 PPA,¹¹ yet he complains that Big Rivers “provided only cursory treatment [in this
13 case] of whether it needs the excess energy and capacity.”¹²

14 The Attorney General’s complaint is based on his allegation that
15 circumstances have recently changed,¹³ but he cites no circumstance relevant to
16 this case or to the need for the PPA that the Commission found in Case No. 2020-
17 00183. Instead, the Attorney General raises only the recently passed Senate Bill

⁸ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, P.S.C. Case No. 2020-00183, Order (Sept. 28, 2020), at pp. 12-13.

⁹ Application ¶ 10.

¹⁰ *Id.* ¶¶ 22-26; Application Exhibit 3, Direct Testimony of Mark Eacret, at pp. 16-18.

¹¹ Attorney General’s Brief, at pp. 6-7.

¹² *Id.* at p. 6.

¹³ *Id.* at p. 7.

1 4,¹⁴ which grants the Commission some authority over the retirement of
2 generating resources. As Big Rivers is not proposing to retire any generating
3 resources, Senate Bill 4 is not relevant to this case.

4 Additionally, the impact of intermittent resources on the reliability of the
5 electric grid is not a changed circumstance – that issue was discussed in the case
6 approving the PPA. For example, in his Direct Testimony in Case No. 2020-
7 00183, Mark Eacret explained that Big Rivers limited its purchase of solar power
8 because of the concerns over the impact that over-saturation of intermittent
9 resources may have on grid reliability.¹⁵

10 The reliability of intermittent resources was also discussed in the case
11 reviewing Big Rivers’ 2020 Integrated Resource Plan (“*IRP*”). In that case, the
12 Attorney General praised the same PPA (and the same need) he now criticizes:

13 BREC’s decision to adopt significant quantities of renewably-sourced
14 power into its supply-side resources is paying, or will pay dividends
15 in many ways: (a) approximately twenty-five percent of the
16 Company’s economic development candidates have made some
17 request or inquiry about renewable energy; (b) BREC states that the
18 diversification of its supply-side portfolio will reduce risks; (c) BREC
19 has received an investment-grade credit rating from at least one
20 credit rating agency; and (d) BREC’s long-term environmental costs

¹⁴ *Id.*, at pp. 7-8.

¹⁵ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, P.S.C. Case No. 2020-00183, Application Exhibit 4, Direct Testimony of Mark Eacret, at p. 16; *see also id.*, Big Rivers’ response to Item 19 of the Attorney General’s Second Request for Information (discussing grid reliability issues posed by high levels of intermittent resource saturation); *id.*, Big Rivers’ response to Item 19 of the Commission Staff’s Initial Request for Information (also discussing grid reliability issues posed by high levels of intermittent resource saturation).

1 may be reduced through the combination of the adoption of the solar
2 PPAs, and the conversion of the Green units to gas-firing.¹⁶
3 This praise came while the Attorney General also acknowledged Big Rivers’
4 attention on ensuring reliability, commenting, “[d]espite the benefits a diversified
5 supply-side portfolio can bring BREC is cognizant of the inherent reliability risks
6 that a large-scale, rapid switching to renewable sources (which by nature are
7 intermittent) can bring....”¹⁷

8 The real flaw of the Attorney General’s brief in this case is that it
9 misconstrues the need for the PPA that Big Rivers demonstrated in Case No.
10 2020-00183, despite having recognized that need in the 2020 IRP review. The
11 Attorney General claims that the “PPA procures more generation than is
12 necessary to meet the obligation to Nucor.”¹⁸ However, the Attorney General is
13 now focused only on one contractual obligation under the Nucor retail electric
14 service agreement and ignores the other benefits of the amended PPA, including
15 that adding the amended PPA to Big Rivers’ power supply portfolio provides
16 nearly \$86 million in value to Big Rivers and its Members, supports economic
17 development, reduces regulatory and credit risks by diversifying power supply
18 sources, and helps to fulfill Big Rivers’ wholesale power obligations to serve the
19 native load of Big Rivers’ Member-Owners, as well as existing power supply

¹⁶ See *In the Matter of: Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation*, P.S.C. Case No. 2020-00299, Attorney General’s Comments, at p. 3 (citations omitted).

¹⁷ *Id.* at p. 4.

¹⁸ Attorney General’s Brief, at p. 3.

1 obligations to Owensboro Municipal Utilities (OMU) and the Kentucky Municipal
2 Energy Agency (KyMEA).¹⁹

3 **Big Rivers Has Demonstrated the PPA Remains Cost-Effective**

4 As Big Rivers explained in Case No. 2020-00183:

5 The assurance of the long-term competitive power pricing under the
6 Nucor Contract was a critical factor in Nucor’s decision to construct
7 its new facility at the Buttermilk Falls Site. And to ensure that the
8 existing retail customers served by Big Rivers’ Members benefit from
9 the significant addition to Big Rivers’ native load that the new Nucor
10 facility will represent, Big Rivers will utilize the Solar Contracts as a
11 source of long-term, low cost power as a hedge of the prices under the
12 Nucor Contract.²⁰

13 Absent the proposed amendment to the PPA, in order to protect against the
14 price risks of the Nucor contract, Big Rivers’ options “are legal action against
15 [Unbridled Solar] and finding another solar developer; keeping the credit support
16 and finding another solar developer; or agreeing to these amendments” in the
17 proposed amendment.²¹ Other solar developers are likely going to price their

¹⁹ See *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts*, P.S.C. Case No. 2020-00183, Order (Sept. 28, 2020), at p. 13 (“the Commission finds that the capacity that exceeds that required by the Nucor Contract will fill other needs identified by BREC in this matter, including a capacity short fall that is expected to arise when BREC begins serving Nucor’s load, the hedging of price risk related to the Nucor Contract, demand from potential economic development candidates seeking to meet corporate sustainability goals, and credit risks arising from BREC’s heavy dependence on coal-fired generation”); *id.*, Application ¶ 7 (“The Solar Contracts are necessary to allow Big Rivers to fulfill its wholesale power obligations to its Members and to have the power available to satisfy the requirements of its native load and its existing contracts to supply power to Owensboro Municipal Utilities (‘OMU’) and the Kentucky Municipal Energy Agency (‘KyMEA’)”); *id.* ¶ 12 (“Further diversifying [Big Rivers’] power supply portfolio is important to reduce the risk of being heavily dependent on coal-fired generation, including the risk of future environmental regulations applicable to coal-fired generation. It enhances Big Rivers’ credit profile by reducing a risk factor often cited by the credit ratings agencies, and it supports Big Rivers’ economic development efforts by allowing Big Rivers to market renewable power to economic development prospects”).

²⁰ *Id.*, Application ¶ 9.

²¹ Application Exhibit 3, Direct Testimony of Mark Eacret, at p. 18.

1 Attorney General destroys Big Rivers’ ability to utilize the PPA as a long-term,
2 low-cost resource, and forcing Big Rivers to seek out other options at higher
3 prices. Although the Attorney General claims that he is focused “on achieving the
4 least cost for ratepayers,”²⁶ his proposals, if adopted by the Commission, will wipe
5 out nearly \$86 million in expected benefit to ratepayers.

6 To reiterate Big Rivers’ initial brief in this matter, the amended PPA
7 remains a reasonable and cost-effective source of energy that is (1) for a lawful
8 object within the corporate purposes of Big Rivers and necessary; (2) appropriate
9 for, and consistent with, the proper performance by Big Rivers of its service to the
10 public, and will not impair its ability to perform that service; (3) reasonably
11 necessary and appropriate for such purpose; and (4) not a wasteful duplication of
12 facilities.²⁷ Therefore, the Commission should approve Amendment No. 1.

13 On this the 19th day of April, 2023.

²⁶ *Id.* at p. 5.

²⁷ *See* KRS 278.300.

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Respectfully submitted,

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