

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR APPROVAL OF)	
ITS 2020 ENVIRONMENTAL COMPLIANCE)	
PLAN, AUTHORITY TO RECOVER COSTS)	CASE NO.
THROUGH A REVISED ENVIRONMENTAL)	2019-00435
SURCHARGE AND TARIFF, THE ISSUANCE OF)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR CERTAIN PROJECTS,)	
AND APPROPRIATE ACCOUNTING AND OTHER)	
RELIEF)	

ORDER

On February 7, 2020, Big Rivers Electric Corporation (BREC) filed an application, pursuant to KRS 278.183, seeking approval of its proposed 2020 Environmental Compliance Plan, which includes several projects to ensure that BREC's coal-fired generation units are compliant with applicable federal, state, and local environmental laws or regulations. The total estimated capital cost for the 2020 Environmental Compliance Plan is \$232.3 million and ongoing incremental operation and maintenance expense is estimated to be \$8.7 million annually.¹ The application also requests current recovery through BREC's environmental surcharge mechanism (ESM) of reasonable costs associated with the projects contained in BREC's 2020 Environmental Compliance Plan and proposed changes to its environmental surcharge tariff and monthly reporting forms. The application also seeks Certificates of Public Convenience and Necessity (CPCNs) for two projects in the 2020 Environmental Compliance Plan. The application further

¹ Application, Exhibit C.

requests a declaration that two other projects do not require a CPCN or, in the alternative, issuing a CPCN for those projects. Lastly, the application requests authorization for BREC to implement the following accounting treatment: (1) initiate settlement of existing asset retirement obligations (AROs) and amortization of corresponding regulatory assets related to the required closure of the ash ponds at the Green Station and Reid/Henderson Municipal Power & Light (HMP&L) Station Two; (2) establish and amortize a regulatory asset for the income statement impacts associated with forthcoming ARO-related liabilities arising from BREC's Coleman Station ash ponds; (3) begin amortization of an existing regulatory asset reflecting deferred costs of compliance with the Disposal of Coal Combustion Residuals from Electric Utilities Rule (CCR Rule); and (4) establish a regulatory asset for reasonable expenses incurred in developing and pursuing the relief requested in the instant application and the recovery of those expenses over a reasonable period.

Pursuant to an Order issued on March 3, 2020, a procedural schedule was established for the processing of this matter. The procedural schedule provided, among other items, deadlines for requesting intervention; two rounds of discovery upon BREC's application; and for BREC or intervenors, if any, to request a hearing or file notice that the matter can be submitted for a decision on the record. The only intervenor to this matter is Kentucky Industrial Utility Customers, Inc., who did not file any testimony or discovery. BREC filed responses to two rounds of discovery from Commission Staff. On May 26, 2020, BREC filed notice requesting that this matter be decided on the record. Having reviewed the request, the Commission finds BREC's request is reasonable and should be approved. Accordingly, the matter is submitted to the Commission for a decision based on the existing record without the need for a hearing.

BACKGROUND

BREC is a rural electric generation and transmission cooperative established pursuant to KRS Chapter 279 with its headquarters in Henderson, Kentucky.² BREC provides wholesale electricity requirements to its three member-owner distribution electric cooperatives: Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation.³ The three member-owner distribution electric cooperatives, in turn, serve approximately 118,000 customers located in 22 western Kentucky counties.⁴

BREC currently owns, operates, and maintains 1,444 megawatts (MW) of predominantly coal-fired generation at its Wilson Station, Coleman Station, and Sebree Station.⁵ The Wilson Station consists of a single coal-fired unit with a net capacity rating of 417 MW.⁶ The Wilson Station is equipped with a flue gas desulfurization (FGD) system comprised of four horizontal absorbers first commercialized in 1986.⁷ The Wilson Station is also equipped with Selective Catalytic Reduction technologies and its closed cooling water system represents Best Available Control Technology.⁸ The Wilson Station also contains a special waste landfill.⁹

² Application ¶¶ 6.

³ *Id.*

⁴ *Id.* Those counties are Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Union, and Webster.

⁵ See Application ¶¶ 7. BREC also purchases 178 MW of hydroelectric capacity from the Southeastern Power Administration.

⁶ Application ¶¶ 8.

⁷ *Id.*

⁸ Application ¶¶ 29.

⁹ Application ¶¶ 11.

The Coleman Station consists of three coal-fired units with a combined net generating capacity of 443 MW.¹⁰ The Coleman Station is equipped with a Wheelabrator Air Pollution Control designed FGD system, which contains a single vertical absorber that was first commercialized in 2007.¹¹ The Coleman Station also contains three coal ash ponds.¹² BREC idled the Coleman Station in 2014 due to its inability to comply with relevant environmental regulations and BREC intends to retire the Coleman Station by the end of 2020.¹³

The Sebree Station consists of three generating plants.¹⁴ The first is the Green Station which is comprised of two coal-fired units with a combined total net generating capacity of 454 MW.¹⁵ The second is the Reid Station which is comprised of a 65 MW natural gas-fired combustion turbine unit and a 45 MW coal-fired unit that has been idled since 2016.¹⁶ The third plant is the HMP&L Station Two which consists of two coal-fired units owned by the city of Henderson, which were retired in early 2019.¹⁷ The Sebree Station also contains a special waste landfill at the Green Station and ash ponds at all three generating plants.¹⁸

¹⁰ Application ¶¶ 9.

¹¹ *Id.*

¹² Application ¶¶ 11.

¹³ Application ¶¶ 9.

¹⁴ Application ¶¶ 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Application ¶¶ 11, 21, and 23.

BREC'S 2020 ENVIRONMENTAL COMPLIANCE PLAN

BREC's 2020 Environmental Compliance Plan is comprised of the following proposed projects.

1. Project 12 – BREC proposes replacing and upgrading the existing FGD system and related equipment at the Wilson Station utilizing the existing FGD system at the Coleman Station as well as updating gypsum dewatering facilities and wastewater treatment (WWT) improvements (Project 12). BREC states that the existing FGD system at the Wilson Station has exceeded its useful life and that the system technology is dated and ineffective, which would require significant ongoing investment to maintain and operate in order to comply with federal emissions rules promulgated under the Clean Air Act, such as the Cross-State Air Pollution Rule (CSAPR) and the Mercury and Air Toxics Standards (MATS).¹⁹ BREC points out that the design of the existing FGD at the Wilson Station is considered obsolete due to performance limitations and operation problems, such as gas flow maldistribution.²⁰ Historically, the existing FGD at the Wilson Station has achieved an average 92 percent sulfur dioxide (SO₂) removal rate.²¹ However, due to its performance and operational issues, the Wilson Station has operated under an SO₂ allocation deficit since 2017 under CSAPR, which could result in penalties in the future.²² BREC asserts that Project 12 will achieve ongoing environmental compliance at the Wilson Station, maximize the plant's value, and ensure the continued availability of its baseload coal-fired generating capacity in a reasonable and least-cost manner. BREC

¹⁹ Application ¶ 27.

²⁰ Direct Testimony of Michael T. Pullen (Pullen Testimony) at 19.

²¹ *Id.*

²² *Id.*

states that the Coleman Station FGD system installed at the Wilson Station is modeled to remove 97 percent of the SO₂.²³ The estimated capital cost for this project is \$ [REDACTED] million and ongoing operating and maintenance expenses are expected to be \$ [REDACTED] million annually.²⁵ BREC estimates that it could save approximately \$ [REDACTED] by utilizing the Coleman Station FGD as part of the Wilson Station FGD retrofit and upgrade project compared to installing a new FGD system.²⁶ BREC further estimates that the Wilson Station's fixed operation and maintenance cost will decrease by an average of approximately \$4 million annually, and the Wilson Station's non-fuel variable operation and maintenance cost will decrease by an average of \$ [REDACTED], through 2035.²⁷ The reduction in operation and maintenance cost is driven by the decrease in the reduced maintenance costs associated with the current FGD system; the production of market-grade gypsum by the Coleman Station FGD, which eliminates the cost of sludge and ash disposal in the landfill; and the elimination of certain reagents that are no longer needed for the operation of the Coleman Station FGD as compared to the operation of the existing Wilson Station FGD.²⁸ In addition, the removal and reuse of the Coleman Station FGD

²³ BREC's Response to Commission Staff's Initial Request for Information (Staff's First Request), Item 7.

²⁴ All highlighted material herein reflect information that is subject to BREC's petition for confidential treatment filed in conjunction with the instant application. By separate Order issued on August 6, 2020, the Commission has addressed BREC's confidentiality petition. Pursuant to 807 KAR 5:001, Section 13(5), when confidentiality is denied, "the material shall not be placed in the public record for the period permitted pursuant to KRE 278.410 to bring an action for review."

²⁵ Application ¶ 27.

²⁶ Pullen Testimony at 26. See also, Direct Testimony of Paul G. Smith (Smith Testimony), Exhibit Smith-2, Analysis of FGD Alternatives for Wilson Unit 1.

²⁷ Pullen Testimony at 27.

²⁸ BREC's Response to Staff's First Request, Item 5.

would reduce the net book value of the Coleman Station by approximately \$23.3 million, resulting in decreased unrecovered costs at the time of the station's retirement.²⁹

2. Project 13-1 – BREC proposes to close the coal ash pond at the Green Station and repurpose a portion of the ash pond closure as a new Water Mass Balancing Pond (WMB Pond) as well as modifying the FGD WWT systems for upset and maintenance conditions (Project 13-1). BREC states that the closure of the Green Station ash pond is driven by the CCR Rule and limitations prescribed by the Green Station's Kentucky Pollutant Discharge Elimination System (KPDES) permit.³⁰ The Green Station ash pond fails to comply with the CCR Rule siting requirement that prescribes a separation of at least five feet between the bottom of the ash pond and the top elevation of groundwater.³¹ The project will consist of closing the Green Station ash pond by using a hybrid approach which would cap in place approximately 450,000 cubic yards of coal combustion residuals (CCR) material estimated to be in the ash pond footprint by consolidating and covering it along existing berms within the pond.³² The remaining 550,000 cubic yards of CCR material will be removed and relocated to the existing Green Station landfill.³³ The project will also consist of a new 17-acre lined WMB Pond, which will be constructed in place of the removed CCR material to receive wastewater from other areas of the Green Station (such as wastewater from floor drains and storm water runoff), and new chemical equipment installed at the WMB Pond to meet expected

²⁹ Pullen Testimony at 30.

³⁰ Application ¶¶ 27.

³¹ Pullen Testimony at 32.

³² Application ¶¶ 27.

³³ *Id.*

KPDES discharge requirements at the relevant outfall.³⁴ The project will also include a modification of the current WWT system to contain maintenance activities by adding a new thickener overflow pond in place of one of the coal pile runoff ponds.³⁵ The estimated capital cost for this project is \$ [REDACTED] million and ongoing operating and maintenance expenses are expected to be \$ [REDACTED] annually.³⁶

3. Project 13-2 – BREC proposes closing the following three coal ash ponds at the Coleman Station: North Pond (approximately 60 acres), South Pond (approximately 94 acres), and Sluice Pond (approximately 49 acres) (Project 13-2). BREC points out that on August 21, 2018, the U.S. Court of Appeals for the District of Columbia vacated and remanded a number of provisions within the CCR Rule, including those that exempt legacy ponds from the regulation such as the Coleman Station ash ponds.³⁷ BREC informs that the U.S. Environmental Protection Agency (EPA) is presently examining the path forward for implementation of this decision, and it is also expected that the legacy ponds will be subject to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR.³⁸ BREC anticipates the CCR Rule will require the closure of Coleman Station ash ponds.³⁹ BREC states that should the anticipated regulation of legacy ash ponds, like those at the Coleman Station, not occur or significantly differ from that expected, BREC will reevaluate

³⁴ *Id.* See also, Pullen Testimony at 31–32.

³⁵ Application ¶¶ 27.

³⁶ *Id.*

³⁷ Application ¶ 25. See *Util. Solid Waste Activities Grp. (USWAG) v. EPA*, 901 F.3d 414 (D.C. Cir. 2018).

³⁸ *Id.*

³⁹ Application ¶¶ 27.

its plans to proceed.⁴⁰ The project will consists of closing the ponds in place by capping each pond with a cover system as outlined in the CCR Rule.⁴¹ The estimated capital cost for this project is \$ [REDACTED] million and ongoing operating and maintenance expenses are expected to be \$ [REDACTED] annually.⁴²

4. Project 13-3 – BREC proposes closing the coal ash pond that was formerly utilized at Reid Station and HMP&L Station Two (Project 13-3). In light of the retirement of Station Two in February of 2019, BREC states that the ash pond will need to be closed as required by the CCR Rule.⁴³ BREC proposes to close in place the 24-acre ash pond with a cover system as outlined by the CCR Rule.⁴⁴ The estimated capital cost for this project is \$ [REDACTED] million, of which BREC’s projected share is \$ [REDACTED] million.⁴⁵ Projected ongoing operating and maintenance expenses are expected to be \$ [REDACTED] annually, with \$ [REDACTED] representing BREC’s share on an annual basis.⁴⁶ BREC requests recovery through the ESM only of the actual costs that it will incur in connection with this project.⁴⁷

5. Project 14 – BREC proposes installing a final cover system at the Wilson Station Phase 1 landfill (Project 14). Although the Phase 1 landfill at the Wilson Station

⁴⁰ Pullen Testimony at 38.

⁴¹ Application ¶ 27.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* BREC asserts that the city of Henderson, which owns Station Two, is obligated to share in the cost of the Station Two ash pond closure under the various agreements that comprise of the Station Two contracts entered into between BREC and the city of Henderson and in particular the Joint Facilities Agreement. Should it be determined that the city of Henderson is not obligated to pay for the Project 13-3 cost, BREC requests authority to recover the costs it actually incurs in connection with this project.

⁴⁶ *Id.*

⁴⁷ Pullen Testimony at 43.

stopped receiving special wastes in 2010, BREC states that the CCR Rule requires that the landfill be monitored and maintained to ensure compliance with the regulations governing CCR disposal and storage and groundwater protection, such as 46 KAR 45:110, Section 1(4), which specifies a liner as one design requirement to ensure the containment of waste and compliance with 401 KAR Chapter 45, which governs the disposal of special wastes in Kentucky.⁴⁸ The project includes the construction of an engineered synthetic geo-membrane liner to serve as the final cover system for the Phase 1 landfill.⁴⁹ BREC states that the project is designed to mitigate rain water penetration of the landfill into groundwater, which advances the goal of full compliance with corrective action requirements of 401 KAR Chapter 45.⁵⁰ The estimated capital cost for this project is \$ [REDACTED] million, and ongoing operating and maintenance expenses are expected to be \$ [REDACTED] annually.⁵¹ BREC also evaluated a conventional cap or traditional multilayer cover as well as a microdrain system.⁵² However, the estimated capital costs of these two alternatives significantly exceed the capital cost of Project 14 by \$ [REDACTED] million for the conventional cap option and \$ [REDACTED] million for the microdrain system option.⁵³

6. Project 15 – BREC proposes installing a perimeter drainage system and implementing other groundwater and non-groundwater protection measures at the Green Station landfill to reduce the level of lithium in the groundwater in compliance with the

⁴⁸ Application ¶¶ 27. See also Pullen Testimony at 46.

⁴⁹ Application ¶¶ 27.

⁵⁰ *Id.*

⁵¹ *Id.* See also Pullen Testimony at 46-47.

⁵² Pullen Testimony at 47.

⁵³ Pullen Testimony, Exhibit Pullen-3.

CCR Rule (Project 15).⁵⁴ The project also includes removal of coal ash run-off from the sedimentation pond located next to the Green Station landfill.⁵⁵ The estimated capital cost for this project is \$ [REDACTED] million, of which BREC's projected share is \$ [REDACTED] million.⁵⁶ Projected ongoing operating and maintenance expenses are expected to be \$ [REDACTED] annually, with \$ [REDACTED] representing BREC's share on an annual basis.⁵⁷ BREC requests authority to recover through its ESM the costs it actually incurs.⁵⁸

7. Project 16 – BREC proposes to recover certain costs associated with completed and ongoing projects to comply with the CCR Rule at Wilson Station, Green Station, and Reid Station/Station Two, which costs were incurred during and after 2015 that have been deferred as part of the regulatory assets approved in Case No. 2015-00333 (CCR Regulatory Assets).⁵⁹ These projects include the installation of groundwater monitoring wells, CCR pile containment measures, installation of leachate collection and treatment systems, and the development of numerous engineering studies and technical analyses to comply with the CCR Rule.⁶⁰ The estimated compliance costs are expected to total \$ [REDACTED] million following the completion of ongoing projects later in 2020.⁶¹

⁵⁴ Application ¶¶ 27 and Pullen Testimony at 50-51.

⁵⁵ Application ¶ 27.

⁵⁶ *Id.* BREC asserts that the city of Henderson, which owns Station Two, is obligated to share in those Green Station landfill costs that are attributable to the Station Two waste in the landfill, based upon the percentage of waste in the landfill attributable to the city of Henderson's share of waste generated by Station Two. Should it be determined that the city of Henderson is not obligated to pay for the Project 15 cost, BREC requests authority to recover the costs it actually incurs in connection with Project 15.

⁵⁷ *Id.*

⁵⁸ Pullen Testimony at 51.

⁵⁹ Case No. 2015-00333, *Application of Big Rivers Electric Corporation for Authority to Establish Regulatory Assets for Expenses Related to Coal Combustion Residuals Rule* (Ky. PSC Jan. 5, 2016).

⁶⁰ Application ¶¶ 27.

⁶¹ *Id.*

The estimated annual impact on member bills from the 2020 Environmental Compliance Plan is an increase to the Rural rate class of approximately 2.42 percent and the Large Industrial rate class of approximately 2.44 percent.⁶²

BREC proposes to calculate a rate of return by applying a 1.24 Times Interest Earned Ratio (TIER) to its current weighted average cost of debt, which would be calculated each month based on its actual outstanding long-term debt and related interest expense during each month.⁶³ BREC states that this proposed calculation is the same method as was accepted for its 2012 Environmental Compliance Plan.⁶⁴

PROPOSED ACCOUNTING TREATMENT

BREC states that the Commission previously approved, in Case No. 2015-0033, the establishment of regulatory assets for the income statement impacts resulting from AROs related to the Green Station ash pond and the Station Two ash pond for 2015 and subsequent years.⁶⁵ BREC states that, as of December 31, 2019, the ARO liability balances for the Green Station ash pond was approximately \$25.3 million, and its share of the Station Two ash pond was \$9.4 million.⁶⁶ BREC notes that these balances reflect the present value of the estimated future cash flows required to close the ash ponds as supported by the updated cost studies prepared by Burns & McDonnell.⁶⁷ BREC points out that the closure of the Green Station ash pond, Project 13-1, and the closure of the

⁶² Direct Testimony of John Wolfram, Exhibit JW-5.

⁶³ Application ¶ 47.

⁶⁴ *Id.*

⁶⁵ Application ¶ 50.

⁶⁶ *Id.*

⁶⁷ *Id.*

Station Two ash pond, Project 13-3, will settle the AROs concerning those facilities and that, pursuant to applicable accounting rules, the precise amount of the ARO will be determined as BREC expends funds toward the ash pond closures.⁶⁸

In order to match ESM revenue with expense, BREC proposes to recover the costs associated with Projects 13-1 and 13-3 through non-levelized amortization of the actual ash pond closure spending-to-date over a rolling 10-year period.⁶⁹ According to BREC, this method ensures that cost recovery through the ESM is based on actual project spending while also allowing BREC to match its amortization expense with ESM revenue.⁷⁰ BREC avers that the proposed 10-year amortization period is consistent with the amortization period previously approved by the Commission for recovery of similar costs associated with ash pond closures included in Kentucky Utilities Company's 2016 Environmental Compliance Plan.⁷¹

With respect to Project 13-2, the closure of the Coleman Station ash ponds, BREC states that it expects to recognize an ARO liability upon expansion of the CCR Rule to include legacy ponds.⁷² BREC asserts that the Rural Utility Service's (RUS) Uniform System of Accounts (USoA) requires the asset retirement cost to be depreciated over the life of the useful asset of the related asset that gives rise to the obligation.⁷³ BREC further

⁶⁸ *Id.*

⁶⁹ Application ¶¶ 51.

⁷⁰ *Id.*

⁷¹ BREC's Response to Staff's First Request, Item 1. See Case No. 2016-00026, *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Aug. 8, 2016).

⁷² Application ¶¶ 52.

⁷³ *Id.*

asserts that the Financial Accounting Standards Board Accounting Standards Codification 14 (ASC) Topic 410-20, Asset Retirement Obligations, also requires AROs to be recognized at fair value when incurred and capitalized as part of the related long-lived asset.⁷⁴

Accordingly, BREC states that it expects to record depreciation expense for the ARO-related assets and accretion expense for the ARO-related liabilities each month following initial recognition of the Coleman Station ash ponds ARO.⁷⁵ Similar to the Green Station and Station Two ash pond AROs, BREC states that mandated accounting treatment would result in a mismatch of revenues and expenses during the period when it is recognizing ARO-related expenses but not yet collecting revenue through rates.⁷⁶ To avoid this scenario, BREC requests authority to establish regulatory assets for the ARO-related depreciation expense and accretion expense, respectively, immediately upon the impending recognition of the ARO related to the Coleman Station ash ponds.⁷⁷ BREC indicates that the requested Coleman ARO Regulatory Asset is consistent with the treatment the Commission authorized in Case No. 2015-00333 of the same issue for the Green Station and Station Two ash pond AROs.⁷⁸

BREC also requests that it be permitted to record as part of the regulatory assets any prospective adjustments to the amounts for ARO-related depreciation and accretion expense associated with the ARO balances, as changes to the underlying cost estimates

⁷⁴ *Id.*

⁷⁵ Application ¶ 53.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

and timing will impact these amounts.⁷⁹ BREC states that this treatment will appropriately defer recognition of these ARO expenses until recovery of the actual costs through the ESM.⁸⁰ When Project 13-2 commences and costs begin to be incurred, BREC requests authority to recover as an expense through its ESM the amortization of the Coleman Station actual spend-to-date over a rolling 10-year period in the same manner as requested with respect to the Green Station and Station Two ash ponds.⁸¹

With respect to Project 16, BREC proposes to amortize the entire balance of the CCR Regulatory Assets over a fixed, 10-year period.⁸² BREC contends that this is a balanced approach that will minimize impact to ratepayers' bill while allowing BREC to gradually recover necessary and prudently incurred environmental compliance-related costs.⁸³

With respect to expenses incurred by BREC in developing the instant application and prosecuting the matter, BREC states that these costs stem from the retention of experts in the legal, regulatory, and engineering professions to assist BREC in evaluating compliance options.⁸⁴ BREC notes that these costs are significant relative to the level of outside service costs built into its base rates, but that they are necessary and prudent and that BREC should have an opportunity to recover these costs consistent with KRS

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Application ¶ 55.

⁸³ *Id.*

⁸⁴ Application ¶ 56.

278.183.⁸⁵ Accordingly, BREC requests authority to establish a regulatory asset for its actual costs associated with this case, to amortize the costs over three years, and to recover the costs through the environmental surcharge.⁸⁶ BREC states that this method was approved as part of its 2012 Environmental Compliance in Case No. 2012-00063.⁸⁷ Should the Commission deny BREC's request to recover all of the relevant costs through the environmental surcharge, BREC alternatively requests the Commission grant BREC the authority to establish a regulatory asset to defer the costs for possible recovery if approved by the Commission in a future proceeding.⁸⁸

DISCUSSION

Extensions in the Ordinary Course of Business

No utility may begin the construction of any facility to be used to provide utility service to the public without first obtaining a CPCN from the Commission, except as noted in KRS 278.020(1)(a). That statute provides, in pertinent part, as follows:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except:

1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory;
2. Ordinary extensions of existing systems in the usual course of business;

...

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* See Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account* (Ky. PSC Oct. 1, 2012).

⁸⁸ Application ¶ 56.

until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.⁸⁹

Of the exceptions provided for in the CPCN statute, the first is for service connections to electric-consuming facilities and is not applicable here. The second exception is for ordinary extensions of existing systems in the usual course of business. 807 KAR 5:001, Section 15(3), provides that a CPCN shall not be required for construction projects that do not create wasteful duplication of facilities or conflict with the existing service of other jurisdictional utilities operating in the same area and that do not involve sufficient capital outlay to materially affect a utility's existing financial condition or will not result in increased charges to its customers.

BREC asserts that capital costs associated with Projects 14 and 15, involving the installation of a final cover system for Phase 1 of the Wilson Station landfill and a perimeter drainage system and other facilities at the Green Station landfill, respectively, are relatively insignificant such that they represent a small percentage of BREC's net utility plant and that such costs will not materially impact BREC's financial condition.⁹⁰ BREC further asserts that the costs of Projects 14 and 15 will have a minor impact on the amounts collected each month through the ESM.⁹¹

The Commission finds that Projects 14 and 15 do not involve sufficient capital outlay to materially affect BREC's existing financial condition. The estimated capital cost of Project 14 is \$ [REDACTED], which reflects [REDACTED] percent of BREC's net utility plant of

⁸⁹ KRS 278.020(1)(a). The statute also provides for a third category of exception to the CPCN requirement, but that third category involves a water district or a water association undertaking certain waterline extension or improvement project. This third category is not applicable to the instant matter.

⁹⁰ Application ¶ 38.

⁹¹ *Id.*

\$905,085,680 as of December 31, 2019.⁹² Likewise, the estimated capital cost of Project 15 is \$ [REDACTED], which reflects [REDACTED] percent of BREC's net utility plant. Given that the total annual billing impact on customers is between 2.42 percent and 2.44 percent based on all of the projects contained in the 2020 Environmental Compliance Plan and that Projects 14 and 15 account for less than 10 percent of the total cost of BREC's 2020 Environmental Compliance Plan, the Commission also finds that the increased customer charge resulting from Projects 14 and 15 will be relatively minor and not material to trigger the CPCN requirement, particularly where such projects are already being scrutinized under KRS 278.183. Lastly, we find that these two projects do not create wasteful duplication of facilities or conflict with the existing service of other jurisdictional utilities operating in the same area. Accordingly, the Commission finds that Projects 14 and 15 should be characterized as extensions in the ordinary course of business and are exempt from the CPCN requirement.

CPCN

The Commission's standard of review of a request for a CPCN is well settled. No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.⁹³ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁹⁴

Need requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

⁹² BREC's 2019 Annual Report, page 15 of 141.

⁹³ KRS 278.020(1).

⁹⁴ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁹⁵

Wasteful duplication is defined as an excess of capacity over need and an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.⁹⁶ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁹⁷ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁹⁸ All relevant factors must be balanced.⁹⁹

The Commission finds that BREC has sufficiently demonstrated that there is a need for Project 12 (Wilson Station FGD replacement and upgrade), Project 13-1 (Green Station ash pond closure), and Project 13-2 (Coleman Station ash ponds closure). The Commission further finds that these environmental projects reflect the most reasonable least-cost alternative to comply with the regulations promulgated under the Clean Air Act, such as CSAPR and MATS, KPDES permit requirements, and the CCR Rule.

⁹⁵ *Id.* at 890.

⁹⁶ *Id.*

⁹⁷ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

⁹⁸ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

⁹⁹ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

Accordingly, the Commission finds that BREC should be authorized a CPCN for the construction of Project 12 and 13-1 as contained in its 2020 Environmental Compliance Plan. With regard to Project 13-2, involving the closure of the Coleman Station ash ponds, the Commission finds that BREC should be authorized a conditional CPCN subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR. BREC should notify the Commission when this occurs and should not begin construction on Project 13-2 until after such notification has been provided to the Commission.

With respect to Project 13-3, involving the Station Two ash pond closure, the Commission finds that this project does not require a CPCN because Station Two is wholly owned by the city of Henderson and is, therefore, exempt from the requirements of KRS 278.020(1). This finding is consistent with our determination in Case No. 2012-00063 involving the installation of emission control monitors at Station Two as not requiring a CPCN due to the city of Henderson's ownership of Station Two.¹⁰⁰

Environmental Surcharge

KRS 278.183 provides that a utility shall be entitled to the current recovery of its costs of complying with the Clean Air Act, as amended, and those federal, state, or local environmental requirements that apply to coal combustion wastes and byproducts from facilities utilized for the production of energy from coal. Pursuant to KRS 278.183(2), a

¹⁰⁰ Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Approval of Its 2012 Environmental Compliance Plan, for Approval of Its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account* (Ky. PSC Oct. 1, 2012).

utility seeking to recover its environmental compliance costs through an environmental surcharge must first submit to the Commission a plan that addresses compliance with the applicable environmental requirements. The plan must also include the utility's testimony concerning a reasonable return on compliance-related capital expenditures and a tariff addition containing the terms and conditions of the proposed surcharge applied to individual rate classes. Within six months of submission, the Commission must:

- (a) Consider and approve the compliance plan and rate surcharge if the plan and rate surcharge are found reasonable and cost-effective for compliance with the applicable environmental requirements;
- (b) Establish a reasonable return on compliance-related capital expenditures; and
- (c) Approve the application of the surcharge.¹⁰¹

With the exception of Project 13-2, the Commission finds that BREC should be allowed to recover the costs associated with the projects contained in its 2020 Environmental Compliance Plan via its existing ESM. Here, BREC proposes a plan that would allow it to be in compliance with federal and state environmental requirements applicable to the Clean Air Act regulations promulgated pursuant to CSAPR and MATS and to coal-combustion wastes, byproducts, and effluents from facilities utilized for production of energy from coal. The Commission further finds that BREC's proposed rate of return and revised monthly environmental surcharge reporting forms are reasonable and should be approved.

With respect to Project 13-2, involving the closure of the Coleman Station ash ponds, the Commission will conditionally approve the project to be included in BREC's 2020 Environmental Compliance Plan and recovery of the Project 13-2 costs through the

¹⁰¹ KRS 278.183(2).

ESM subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR. BREC should notify the Commission when this occurs and should not include Project 13-2 in its 2020 Environmental Compliance Plan and recover the costs of this project until after such notification has been provided to the Commission.

Requested Accounting Treatment

With respect to BREC's request to begin amortization of the Green Station ARO Regulatory Asset and Reid/Station Two ARO Regulatory Asset based on a non-levelized amortization of the actual ash pond closure spending-to-date, over a 10-year rolling period with corresponding settlement of the related AROs,¹⁰² the Commission finds that this request is reasonable and should be approved.

With respect to BREC's request for authority to establish and amortize the Coleman Station ash pond ARO Regulatory Asset applying the same amortization treatment as requested for the Green Station ARO and the Reid/Station Two ARO, the Commission finds that Pursuant to KRS 278.220, the Commission has adopted the RUS USoA for BREC.¹⁰³ With respect to AROs, the RUS USoA states:

(1) 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 estoppel. An asset retirement cost represents the amount capitalized when the liability is

¹⁰² The Green Station ARO does not include the WMB component of Project 13-1.

¹⁰³ Codified as 7 CFR Section 1767.15. The current version of the RUS USoA became effective May 27, 2008, and is also published and referenced as RUS Bulletin 1767B-1.

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.¹⁰⁴

Because the legal obligation to close the Coleman Station ash pond is not yet final, the Commission will conditionally approve BREC's request to establish and amortize the Coleman Station ash pond ARO Regulatory Asset. This conditional approval is subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR. BREC should notify the Commission when this occurs and is not authorized to establish and amortize the Coleman Station ash pond ARO Regulatory Asset until after such notification has been provided to the Commission.

With respect to BREC's request for approval to begin amortizing the entire balance of the CCR Regulatory Assets over a fixed 10-year, or 120-month, period, the Commission finds that this request is reasonable and should be approved.

With respect to BREC's request for approval to establish a regulatory asset for the reasonable expenses incurred in developing and pursuing the relief requested herein (estimated at \$1.1 million) and the recovery of the actual costs expended over a three-year period via the ESM or to defer these costs for possible recovery in a future proceeding, the Commission finds that BREC has, in part, established justification for this request. The Commission has historically authorized the establishment of a regulatory asset when a utility has incurred (a) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (b) an expense

¹⁰⁴ *Id.*, General Instructions, subpart (y), Accounting for asset retirement obligations.

resulting from a statutory or administrative directive; (c) an expense in relation to an industry-sponsored initiative; or (d) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.¹⁰⁵ BREC contends that the costs associated with the preparation and prosecution of its 2020 Environmental Compliance Plan are necessary and prudent and that BREC should have the opportunity to recover these costs. BREC also asserts that the preparation costs were significant relative to the level of outside service costs built into BREC's base rates. The Commission finds that BREC has established that the costs to prepare and prosecute its 2020 Environmental Compliance Plan fall into the second category of expenses appropriate for deferral. The Commission further finds that BREC should be allowed to defer the actual costs of preparing and prosecuting this case, net of any amounts included in its base rates or otherwise capitalized as part of a project. Accordingly, the Commission will approve BREC's request to establish a regulatory asset for the costs associated with BREC's preparation and prosecution of the 2020 Environmental Compliance Plan and the alternative proposal to defer these costs for future recovery. The Commission further finds that BREC should submit information regarding this regulatory asset for Commission review as part of its next annual filing to adjust its Member Rate Stability Mechanism rates.

¹⁰⁵ Case No. 2015-00333, *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), final Order at 5; Case No. 2010-00449, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Amount Expended on Its Smith 1 Generating Unit* (Ky. PSC Feb. 28, 2011), final Order at 7; Case No. 2008-00436, *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.

Motion to Deviate

Filed in conjunction with its application, BREC requests permission for deviation with respect to the requirement set forth in 807 KAR 5:001, Section 15(2)(d)(2). That regulation requires, as part of an application for a CPCN, the filing of plans, specifications, and drawings of the proposed plant, equipment, and facilities that are the subject of the CPCN application. BREC states that, as part of its application, it has provided multiple maps, plans, technical drawings, specifications, and other documents describing and depicting the proposed activities and facilities it seeks to include within its 2020 Environmental Compliance Plan. BREC notes that the proposed projects are at various stages of the engineering and design process, and no construction has begun with respect to any proposed plant, equipment, property, or facility, consistent with KRS 278.020. BREC states that out of an abundance of caution and to the extent 807 KAR 5:001, Section 15(2)(d)(2), requires the submission of fully detailed or final specifications and drawings related to BREC's proposed projects, BREC request a deviation from the filing of final specifications or drawings at this time. BREC asserts that it has substantially complied with the regulation and that BREC commits to supplementing the record as more detailed plans and specifications become available.

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that BREC has established sufficient cause to permit it to deviate from the requirements of 807 KAR 5:001, Section 15(2)(d)(2), with respect to the filing of final plans, drawings, and specifications of any of the projects that are subject to the CPCN requirement until those plans, drawings, and specifications for those relevant projects have been finalized and completed.

IT IS THEREFORE ORDERED that:

1. BREC's 2020 Environmental Compliance Plan is approved as described in its application with the exception of Project 13-2.

2. BREC's request to include Project 13-2 in its 2020 Environmental Compliance Plan is conditionally approved subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR.

3. BREC's request for authority to recover the costs of its 2020 Environmental Compliance Plan through the existing Environmental Tariff is approved with the exception of Project 13-2.

4. BREC's request to recover the costs associated with Project 13-2 is conditionally approved subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR.

5. BREC's request for a CPCN for Projects 12 and Project 13-1 is approved.

6. BREC's request for a CPCN for Project 13-2 is conditionally approved subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR.

7. BREC shall promptly notify the Commission when the condition in ordering paragraphs 2, 4, and 6 have occurred and shall not commence construction of Project

13-2, include Project 13-2 in its 2020 Environmental Compliance Plan, or recover the cost of Project 13-2 through its existing Environmental Tariff until after notification has been provided to the Commission.

8. BREC's request for a finding that Projects 13-3, 14, and 15 do not require a CPCN is granted.

9. BREC's request to establish and amortize the Coleman Station ash pond ARO Regulatory Asset is conditionally approved subject to the actual inclusion of legacy ponds, such as the Coleman Station ash ponds, as being subjected to the requirements of the CCR Rule or being subjected to the Kentucky Administrative Regulations for special waste facilities or forthcoming state regulations specifically applicable to disposal of CCR.

10. BREC shall promptly notify the Commission when the condition in ordering paragraph 9 has occurred and shall initiate the establishment and amortization of the Coleman Station ash ponds ARO Regulatory Asset until after notification has been provided to the Commission.

11. BREC's request for authorization to amortize the Green Station ARO Regulatory Asset and the Reid/Station Two ARO Regulatory Asset through the environmental surcharge is approved.

12. BREC's request for authorization to amortize the CCR Regulatory Assets through the environmental surcharge is approved.

13. BREC's request for authorization to establish a regulatory asset reflecting BREC's costs of preparing and prosecuting this case is approved for accounting purposes only.

14. BREC's request to amortize the regulatory asset for BREC's cost of preparing and prosecuting this case through the environmental surcharge is denied.

15. EKPC shall, within 14 days of the date of this Order, file with the Commission the accounting entries made on its books to effectuate the creation of the regulatory assets.

16. BREC shall file information regarding the regulatory asset associated with BREC's costs of preparing and prosecuting this case for Commission review as part of its next annual filing to adjust its Member Rate Stability Mechanism rates.

17. BREC's motion for a deviation from 807 KAR 5:001, Section 15(2)(d)(2), is granted.

18. BREC shall file the plans, drawings, and specifications for Projects 12, 13-1, and 13-2 within seven days upon the date of the completion and finalization of those plans, drawings, and specifications.

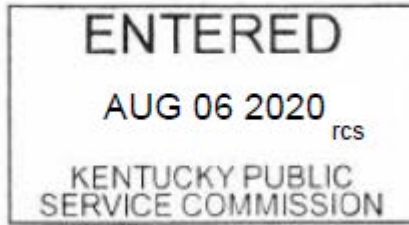
19. Any document filed pursuant to ordering paragraphs 7, 10, 15, and 18 of this Order shall reference the case number of this matter and shall be retained in the post-case correspondence file of this matter.

20. The Commission directs BREC to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085¹⁰⁶ regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency.

21. The matter is closed and shall be removed from the Commission's docket.

¹⁰⁶ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5-6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1-3.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

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