

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On February 26, 2020, Big Rivers Electric Corporation (BREC) filed an application pursuant to the Commission’s Order in Case No. 2020-00064<sup>1</sup> for review of its Member Rate Stability Mechanism (MRSM) Credit for calendar year 2020 as well as information pursuant to the final Orders in Case Nos. 2019-00365<sup>2</sup> and 2019-00435.<sup>3</sup> The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), and Kentucky Industrial Utility Customers, Inc. (KIUC) requested and were granted intervention on March 9, 2021, and March 12, 2021, respectively. In addition the Attorney General and KIUC sponsored joint discovery requests. BREC responded to one round of discovery. On April 20, 2021, the parties submitted a joint motion to submit for a decision based on the existing record.

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<sup>1</sup> Case No. 2020-00064, *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* (Ky. PSC June 25, 2020).

<sup>2</sup> Case No. 2019-000365, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation, and (2) Approval of Tariff* (Ky. PSC Aug. 17, 2020).

<sup>3</sup> Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of Its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental Surcharge, and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Aug. 6, 2020).

## BACKGROUND

In Case No. 2020-00064, BREC filed an application with the primary purpose of restoring BREC's investment grade credit ratings by amending its MRSM Tariff, beginning the amortization of the smelter loss mitigation (SLM) regulatory assets, and receiving approval to take additional steps to mitigate the loss of 850 MW aluminum smelter loads which left BREC's system in 2013-2014. In the proceeding, BREC, KIUC, and the Attorney General filed a unanimous Settlement Agreement, Stipulation, and Recommendation (Settlement Agreement), wherein BREC would provide an annual report starting in 2021 and no later than February 28 of each subsequent calendar year that includes the following identified matters:

- Year-end Times Interest Earned Ratio (TIER) calculation for the prior calendar year;
- The amount of the new TIER Credit that will flow through the MRSM Rider during the following 12 months;
- The amount charged to depreciation and amortization expense for recovery of the SML Regulatory Assets in the prior calendar year that will reduce the SLM Regulatory Assets balance;
- Status of amortization of the SLM Regulatory Assets;
- Interest savings gained (annualized) once investment grade ratings are received from at least two of the three rating agencies;
- Status of and expected decommission costs of Coleman Station, Reid Station Unit 1, and BREC's estimated share of costs associated with Henderson Municipal Power & Light's (HMP&L) Station Two (Station Two); and

- Copy of any proposal to decommission Coleman Station, Reid Station Unit 1, and Station Two that was awarded in the prior year.<sup>4</sup>

The final Order approved the Settlement Agreement, subject to certain modifications and deletions, as well as clarified the forum for the annual report stating that BREC “should file a formal docketed proceeding in the form of an annual application to revise its MRSM rates that should include all information laid out in the settlement and this Order.”<sup>5</sup> The Order also required BREC to submit two cost of service studies (COSS) based upon National Association of Regulatory Utility Commissioners (NARUC) approved methods.

In Case No. 2019-00435, BREC filed an application pursuant to KRS 278.183 for approval of its 2020 Environmental Compliance Plan (ECP). The 2020 ECP included projects that ensured compliance with applicable federal, state, and local environmental laws or regulations for Station Two. The application also requested authorization to establish a regulatory asset for the reasonable expenses incurred in connection to the case and recovery of those expenses over a three year period via the environmental surcharge mechanism (ESM) or to defer those costs for future recovery. In the final Order of Case No. 2019-00435, the Commission found that BREC should be allowed to defer the actual costs of preparing and prosecuting the case, net any amounts included in its base rates or otherwise capitalized as part of a project.<sup>6</sup>

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<sup>4</sup> Case No. 2020-00064 *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* (Ky. PSC June 25, 2020), final Order at 16.

<sup>5</sup> *Id.* at 21.

<sup>6</sup> Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of Its 2020 Environmental Compliance Plan, Authority to Recover Costs Through a Revised Environmental*

In Case No. 2019-00365, BREC and Meade County Rural Electric Cooperative Corporation (Meade County RECC) submitted a joint application seeking approval for the retail contract for electric service between Meade County RECC and Nucor Corporation (Nucor), a related Wholesale Agreement between BREC and Meade County RECC, and establishment of a modified version of the Large Industrial Customer Expansion tariff. In approving the application, the Commission directed BREC to file with the annual Case No. 2020-00064 filing, information detailing the financial impacts of the Nucor retail service agreement and the impact the Nucor load has had on BREC's credit ratings.<sup>7</sup>

BREC filed this application to remain in compliance with the final Order in Case No. 2020-00064 and includes information and documents related to the matters identified in the Settlement Agreement, BREC's current Member equity balance and the minimum required by its loan covenants, the reasonableness of any 2020 decommissioning costs, and detailed descriptions of all actions BREC has taken to minimize decommissioning costs. This application also included details of the total actual expenses incurred by BREC to develop and prosecute Case No. 2019-00435 and information detailing the financial impacts of the Nucor retail service agreement and the impact the Nucor load has had on BREC's credit ratings.

Case No. 2020-00064

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*Surcharge, and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Aug. 6, 2020), final Order at 4.

<sup>7</sup> Case No. 2019-00365, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation, and (2) Approval of Tariff* (Ky. PSC Aug. 17, 2020), final Order, ordering paragraph 6.

In response to the final Order in Case No. 2020-00064, BREC filed responses to the identified matters as follows:

TIER Calculation: Year-end TIER calculation for calendar year 2020 was 2.28 based upon net margins of \$43.5 million.<sup>8</sup> In accordance with Case No. 2020-00064, a TIER Credit of \$33.3 million will move BREC to an overall TIER of 1.30 and net margins of \$10.2 million.<sup>9</sup> Further, in accordance with Case No. 2020-00064, 60 percent, or \$20.0 million, of the TIER Credit will be recorded as a regulatory liability to reduce the SML Regulatory Assets and 40 percent, or \$13.3 million, will flow through the MRSM Rider in 2021.<sup>10</sup>

New TIER Credit: The new TIER Credit, or \$13.3 million, will flow through the MRSM Rider during 2021. The first \$0.7 million is applied to the Rural Delivery Service (RDS) class and the remaining balance is allocated between the RDS class and Large Industrial Customer (LIC) class based upon their respective 2020 class revenues. This allocation results in an annual allocation of \$9.8 million to the RDS class for a total of \$10.5 million and \$2.8 million to the LIC class.<sup>11</sup> The monthly allocations are \$0.9 million for the RDS class and \$0.2 million for the LIC class.

Depreciation and amortization expenses for the SML Regulatory Assets: Based on the 2020 TIER Credit, \$20.0 million will be charged to depreciation and amortization expense for recovery of the SML Regulatory Assets. The amount is first recorded as a

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<sup>8</sup> Application, Direct Testimony of Paul G. Smith (Smith Testimony) at 8 and Exhibit Smith-2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Smith Testimony at 9 and Exhibit Smith-3.

regulatory liability and, according to Case No. 2020-00064, any balance that exceeds \$9.0 million can be applied to the SLM Regulatory Assets. BREC proposes to apply the excess, or \$11.0 million, to the SLM Regulatory Assets.

Status of amortization of SLM Regulatory Assets: Amortization of the SLM Regulatory Assets began in January 2021. BREC stated that a one-time amortization of \$84.9 million was recorded in January 2021. The \$84.9 million represents 80 percent of Member equity in excess of the amount required under BREC's loan covenants.<sup>12</sup> Additionally, \$13.0 million will be charged to amortization expense during 2021. The remaining balance of the SML Regulatory Asset is \$280.018 million.<sup>13</sup>

Interest savings gained (annualized) once investment grade ratings are received from at least two of the three rating agencies: On December 2, 2020, Moody's Investors Service, Inc. (Moody's) assigned BREC an investment grade rating of Baa3.<sup>14</sup> With the credit rating upgrade, BREC has received investment grade credit ratings from two of three rating agencies, which in turn allows for reduced fees on BREC's Revolving Credit Facility with National Rural Utilities Cooperative Finance Corporation (CFC). BREC stated that based on this discounted fee structure, an annual interest savings of approximately \$157,500 will be realized.<sup>15</sup>

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<sup>12</sup> Smith Testimony at 10.

<sup>13</sup> Smith Testimony at Exhibit Smith-4.

<sup>14</sup> Smith Testimony at 10.

<sup>15</sup> *Id.*

Regarding the status of and expected decommissioning costs of Coleman Station, Reid Station Unit 1, and BREC's estimated share of costs associated with Station Two, BREC reported the following:

Coleman Station: Idled in May 2014, BREC took initial steps to prepare the plant to undergo full decommissioning in 2020.<sup>16</sup> The decommissioning was awarded to Demolition Services and work is expected to begin in March 2021 with completion estimated to be in spring 2022.<sup>17</sup> In addition, Coleman Station includes the closure of three ash ponds and is identified as Project 13-2 of BREC's 2020 ECP. Completion is expected to take approximately five years. Bidding will begin after the issuance of the final EPA Coal Combustion Residual regulations but the estimated capital cost and interest for the three coal ash ponds is \$48.7 million and \$4.5 million, respectively. After completion of the project, estimated O&M expenses are expected to be approximately \$21,000 annually.<sup>18</sup>

Reid Station 1: Retired on September 30, 2020 Reid Unit 1 is expected to be fully decommissioned in conjunction with Station Two. However, due to outstanding issues in Case No. 2019-00269 between BREC and HMP&L the decommissioning process has been delayed.<sup>19</sup> BREC noted that it is proceeding with certain activities to make the unit "dry, dark, and safe" as well as asbestos and insulation abatement.<sup>20</sup> The insulation

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<sup>16</sup> Application, Direct Testimony of Michael T. Pullen (Pullen Testimony) at 5.

<sup>17</sup> For the full proposal and bid, see Exhibit Pullen-2. The estimated cost excludes the removal of the scrubber unit, which will be removed and transferred to BREC's Wilson Station.

<sup>18</sup> Pullen Testimony at 7.

<sup>19</sup> Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (filed Jul. 31, 2019).

<sup>20</sup> Pullen Testimony at 8.

removal began in December 2020 and is estimated to be completed in March 2021. BREC anticipates to immediately follow up with the asbestos removal portion and estimates completion in May 2021.<sup>21</sup>

Station Two: Work has begun to transition the plant into a “safe, dark, and dry” status; however, decommissioning cannot begin due to the outstanding issues between BREC and HMP&L that are the subject of Case No. 2019-00269. Additionally, costs associated with the closure of the Station Two ash pond by April 2024 is awaiting a resolution of the disputes regarding the appropriate cost allocation in Case No. 2019-00269. BREC anticipates its share to fully decommission Station Two, including the Station Two ash pond, the ash pond dredgings in the Green landfill, and all other joint use facilities will be 77.24 percent of the total costs.<sup>22</sup> To date, \$8.0 million has been spent (BREC’s share is \$6.8 million) and annual costs of \$750,000 are being incurred until fully decommissioned.<sup>23</sup>

Awarded proposals for decommissioning: A copy of all proposals awarded for decommissioning of Coleman Station and Reid Unit 1 were included and are \$2.7 million and \$0.8 million, respectively.<sup>24</sup> No proposal to decommission Station Two was awarded in 2020.

Case No. 2019-00435

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<sup>21</sup> *Id.* at 8–9.

<sup>22</sup> *Id.* at 11.

<sup>23</sup> *Id.* at 12.

<sup>24</sup> Pullen Testimony, Exhibit Pullen-2 and Exhibit Pullen-3.



As mentioned above, the Commission allowed BREC to defer the actual costs of preparing and prosecuting the 2020 ECP, net of any amount included in its base rates or otherwise capitalized as part of a project. Costs include the retention of legal counsel and a regulatory expert. In the Direct Testimony of Paul G. Smith in Case No. 2019-00435, Mr. Smith estimated the costs to be \$1.1 million; however, due to receiving fewer discovery requests than in previous ECP cases, the actual costs totaled \$289,407.<sup>25</sup> BREC proposes to amortize these costs over three years and to recover the costs through the ESM, or alternatively, authority to include the 2020 ECP regulatory asset in the list of regulatory assets recovered in BREC's MRSM tariff.<sup>26</sup>

#### Case No. 2019-00365

The final Order in Case No. 2019-00365 required BREC to provide information detailing the financial impacts of the Nucor electric service agreement and the impact the Nucor load has had on BREC's credit ratings. Since the Nucor facility is still under construction, service under the retail service agreement approved in Case No. 2019-00365 has not yet begun.<sup>27</sup> During this construction phase, Nucor takes service through a Meade County RECC tariff under BREC's RDS tariff and the financial impacts have been minimal. In Moody's December 2, 2020 report and investment grade rating of Baa3, the report's "Ratings Rationale" specifically noted the long-term contract with Nucor.<sup>28</sup>

#### COSS

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<sup>25</sup> Smith Testimony at 14–15.

<sup>26</sup> *Id.* at 15.

<sup>27</sup> *Id.* at 17.

<sup>28</sup> *Id.*

In order for the Commission to determine whether there is a need to reevaluate BREC’s current rate design, the final Order in Case No. 2020-00064 required BREC to submit two fully allocated COSSs based upon NARUC approved methods. The purpose of the COSS is to assess BREC’s overall rate of return (ROR) on rate base and the relative ROR that BREC is earning from each rate class and evaluate whether each class is contributing its appropriate share. Using the twelve-month test year ending December 31, 2019, BREC’s submitted COSSs were based upon the 12 Coincident Peak (12 CP) and Average and Excess (A&E) methods.<sup>29</sup>

BREC has two rate classes, the RDS and the LIC class. The results, although slightly different between the two studies due to the differing allocation of fixed production between the 12 CP and A&E methods, demonstrate that any subsidization between the RDS and LIC rate classes is virtually nonexistent.<sup>30</sup>

	<b>Class Rate of Return</b>			
	<u>12 CP COSS</u>		<u>A&amp;E COSS</u>	
	<u>ROR</u>	<u>Unitized</u>	<u>ROR</u>	<u>Unitized</u>
RDS	4.94%	1.002	5.05%	1.022
LIC	4.91%	0.995	4.57%	0.936
TOTAL	4.93%	1.000	4.93%	1.000

In the evaluation of the of the energy and demand components of the RDS and LIC rates, both COSSs indicated that the current energy rates are higher than cost-based rates and demand rates are lower than cost-based rates. BREC indicated that no revenue neutral adjustment was appropriate as it could result in a shift in revenues from one BREC

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<sup>29</sup> Application, Direct Testimony of John Wolfram (Wolfram Testimony) at 5.

<sup>30</sup> Wolfram Testimony at 12.

Member to another, which could then result in a need for a retail rate increase by the Member.<sup>31</sup>

### DISCUSSION

The Commission recognizes that approval of the Settlement Agreement as well as BREC's mitigation efforts enabled BREC to regain a second investment grade rating. Additionally, it is apparent that the new TIER Credit is operating as envisioned in Case No. 2020-00064. Therefore the Commission finds that, at this time, no adjustments or modifications to the MRSM tariff are warranted. Additionally, the Commission finds that applying the \$11.0 million above the \$9.0 million TIER Credit Regulatory Liability should be approved because it further supports the reduction of the SML Regulatory Asset. Combined with the headroom balance of \$89.9 million, the SLM Regulatory Assets are reduced from \$413.4 million in December 2020 to \$307.7 million.<sup>32</sup>

Regarding the decommissioning activities, the Commission finds them to be proactive and the costs associated with them to be reasonable. The Commission urges BREC to continue competitive bidding for the decommissioning activities, to continue searching for least cost alternatives and reuse of assets, and to continue ensuring that the decommissioning process includes only reasonable measures necessary and appropriate for continued environmental compliance and appropriate reuse of the site.

The Commission finds that BREC should be authorized to amortize over three years the regulatory asset associated with the expenses incurred in developing and pursuing the relief requested in Case No. 2019-00435 and to recover these costs through

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<sup>31</sup> BREC's response to Commission Staff's First Request for Information, Item 3.

<sup>32</sup> Smith Testimony, Exhibit Smith-4. The total is net the \$27.7 million final Station Two TIER credit.

the ESM. Finally, the Commission notes that the COSSs illustrate that the subsidization between the RDS and LIC classes is minimal and finds that no change to the current rate allocations is warranted.

IT IS THEREFORE ORDERED that:

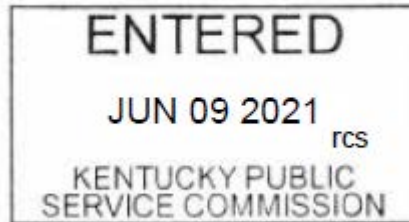
1. BREC is authorized to use \$11.0 million of the TEIR Credit Regulatory Liability amount to reduce the SLM Regulatory Assets.

2. BREC is authorized to amortize \$289,406.91 in expenses incurred in Case No. 2019-00435 over three years and to recover this amount through the environmental surcharge mechanism.

3. BREC shall continue to file annually, by February 28, an application to adjust its MRSM rates pursuant to ordering paragraph 10 of the June 25, 2020 Order in Case No. 2020-00064. The filing shall contain the information set forth in the June 25, 2020 Order in Case No. 2020-00064 and ordering paragraph 6 of the August 17, 2020 Order in Case No. 2019-00365.

4. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bidwell". The signature is written in a cursive style.

Executive Director

Case No. 2021-00061

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