

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On July 19, 2022, Big Rivers Electric Corporation (BREC) filed an application for approval of a regulatory asset to defer expenses related to the asset retirement obligation (ARO) for Phase II of the D.B. Wilson Generating Station (Wilson) coal combustion residuals (CCR) landfill. BREC requested an Order by December 2022 so that it can appropriately account for the regulatory asset in 2022. There are no intervenors in this proceeding. The matter now stands submitted to the Commission for a decision based on the evidentiary record.

BACKGROUND

On April 17, 2015, the U.S. Environmental Protection Agency published the Disposal of Coal Combustion Residuals from Electric Utilities Rule (CCR Final Rule) which regulates the storage and disposal of CCR, including the retirement of CCR impoundments such as landfills.¹ BREC must recognize the ARO and begin to depreciate and accrete the ARO once it is recognized. BREC did not record the ARO for Phase II when the CCR Final Rule was approved because discussions with its auditors led BREC

¹ Application, paragraphs 3 and 4.

to believe that recognition was premature at that time.² Subsequent discussions with BREC's auditors led BREC to record the appropriate balance for the ARO in 2021 and to record a regulatory asset for the annual accretion and depreciation expenses for 2021.³

Phase II is expected to operate until at least 2045 and the ARO will be settled when the landfill is closed.⁴ Without regulatory asset treatment, BREC will experience a mismatch of revenues and expenses. BREC has received RUS approval for the regulatory asset, subject to approval by the Commission.⁵ BREC believes the actual ARO settlement costs should be recoverable through appropriate rate mechanisms in the future. However, at present, there will be a mismatch of revenues and expenses in its financial statements, because accretion and depreciation expense will be recognized monthly beginning in December 2021, even though the revenue will not be recognized until some future period.⁶ These ARO-related expenses, therefore, reduce BREC's margins and understate its true financial performance in the short term. In contrast, when the actual ash pond closure costs are being recovered in the future, BREC's financial performance will be overstated. To avoid this outcome, BREC requests that the Commission authorize the establishment of regulatory assets for deferred depreciation and accretion expense, as discussed above.⁷

² Application, paragraph 8. Phase I of the Wilson CCR landfill stopped receiving waste in 2010 and will be fully closed by 2022. It was not subject to ARO accounting for the CCR Final Rule while in service.

³ Application, paragraph 8.

⁴ Application, paragraph 4.

⁵ Application, Exhibit 2 (filed Aug. 8, 2022).

⁶ Application, paragraph 13.

⁷ Application, paragraph 14.

Based on a report completed in August 2021, Phase II decommissioning will have a nominal cost of \$15.48 million, with a 2021 present value of \$5.85 million.⁸ BREC recorded the ARO at the 2021 present value and deferred catch-up depreciation expenses of \$2.09 million and accretion expenses of \$1.29 million.⁹ BREC projected 2022 depreciation expenses of \$1.49 million and accretion expenses of \$2.46 million.¹⁰

BREC also requests that it be allowed to record, as part of the regulatory assets requested herein, any prospective adjustments to the amounts for ARO-related depreciation and accretion expense associated with the ARO balances existing on December 31, 2021, as changes to the underlying cost estimates and timing will affect these amounts.¹¹ BREC stated this treatment will defer recognition of these ARO expenses until recovery of the actual costs is authorized by the Commission and would ultimately allow BREC to match its revenues and expenses in each accounting period.¹²

LEGAL STANDARD

KRS 278.220 sets out that the Commission may establish a uniform system of accounts (USoA) for utilities and in BREC's case, that the system of accounts shall conform as nearly as practicable to the system adopted or approved by the Rural Utilities Service (RUS). The RUS USoA states that an ARO is a liability for the legal obligation associated with the retirement of a tangible long-lived asset that the utility will settle as a result of a legal or contractual requirement. The liability must be recorded at fair market

⁸ Application, paragraph 11.

⁹ Application, Exhibit 1 (filed Aug. 8, 2022) at 2.

¹⁰ Application, paragraph 12.

¹¹ Application, paragraph 15.

¹² Application, paragraph 15.

value in the period that the liability is incurred. A corresponding and equivalent ARO asset is also recorded on the utility's books to recognize the cost of removal as an integral part of the cost of the associated tangible asset. Accretion expenses are recognized to bring the liability to the fair market value and depreciation expenses are recognized to expense the ARO asset over the life of the tangible asset.

The RUS USoA also provides for regulatory assets, or the capitalization of costs that would otherwise be expensed but for the actions of a rate regulator. It must be probable that the utility will recover approximately equal revenue through the inclusion of these costs for ratemaking purposes, with the intent to recover the previously incurred cost, not a similar future cost.

Additionally, the Commission has established parameters for expenses which qualify for regulatory asset treatment. The Commission has approved 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.¹³ The Commission has also established a requirement that utilities seek Commission approval before recording

¹³ See Case No. 2008-00436, *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).

regulatory assets¹⁴ and requirements regarding the timing for applications seeking such approval.¹⁵

DISCUSSION AND FINDINGS

The Commission has historically approved similar requests to defer the ARO expenses to a regulatory asset. The Commission approved the establishment of regulatory assets for ARO-related depreciation and accretion expenses for Louisville Gas and Electric Company¹⁶ and Kentucky Utilities Company¹⁷ when those utilities adopted Statement of Financial Accounting Standards No. 143, Accounting for Asset Retirement Obligations.¹⁸ East Kentucky Power Cooperative, Inc. received regulatory asset approval for the AROs for the Dale and Cooper stations' asbestos removal, ash ponds, and ash landfill¹⁹ and the Smith station landfill.²⁰ Duke Energy Kentucky, Inc. received regulatory

¹⁴ Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Nov. 3, 2016), Order at 9.

¹⁵ Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Dec. 12, 2016).

¹⁶ Case No. 2003-00426, *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).

¹⁷ Case No. 2003-00427, *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).

¹⁸ Statement of Financial Accounting Standards No. 143 is now codified as ASC Topic 410.

¹⁹ Case No. 2014-00432, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of Regulatory Assets for the Depreciation and Accretion Expenses Associated with Asset Retirement Obligations* (Ky. PSC July 21, 2015).

²⁰ Case No. 2018-00027, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Depreciation and Accretion Expenses Associated with the Smith Station Landfill Asset Retirement Obligations* (Ky. PSC Mar. 8, 2018).

asset approval for ARO for the East Bend ash pond.²¹ BREC received regulatory asset approval for the AROs for the Green and Station Two ash ponds,²² and the Coleman ash pond, if legacy ponds are added to the CCR Rule.²³

The Wilson CCR landfill Phase II is required to close, subject to certain standards set by the CCR Rule, including a final cover and post-closure monitoring, and BREC must record the ARO in accordance with RUS accounting requirements. If the regulatory asset treatment is not approved, BREC will expense these costs now, including the deferred costs in 2021, without rate recovery, but the closure project will be eligible for recovery in rates in 2045. BREC's Member Rate Stability Mechanism (MRSM) returns to customers 40 percent of the annual margins in excess of a 1.30 Times Interest Earned Ratio and uses the remaining 60 percent to offset various regulatory assets. Expensing the previously deferred amounts and the ongoing monthly depreciation and accretion expenses would reduce the margins available to be returned through the MRSM. The ARO regulatory asset will be for accounting purposes only and will have no rate effect on BREC until the ARO is settled.

²¹ Case No. 2015-00187, *Application of Duke Energy Kentucky, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Liabilities Associated with Ash Pond Asset Retirement Obligations* (Ky. PSC Dec. 15, 2015).

²² Case No. 2015-00333, *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).

²³ 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 Sept. 11, 2020).

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that BREC should be authorized to establish the proposed regulatory asset.

IT IS THEREFORE ORDERED that:

1. The accounting treatment requested by BREC to establish a regulatory asset for the income statement impacts including gains, losses, depreciation, and accretion expense related to its Wilson CCR landfill is approved for 2021 and subsequent years.

2. The regulatory asset and liability accounts established in this case are for accounting purposes only.

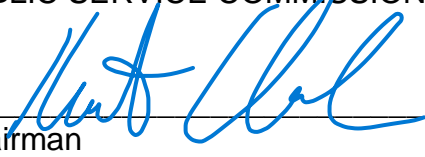
3. BREC shall, within 14 days of service of this Order, file with the Commission the accounting entries made on its books to effectuate the creation of the regulatory assets.

4. BREC shall file annually updated ARO calculations reflecting any studies, reports, or change in other assumptions for the Wilson CCR landfill ARO balances as originally recorded at December 31, 2021. The annual update shall be based upon the balances as of December 31 of each year and the updated calculations shall be submitted at the same time BREC files its annual report with the Commission.

5. Any document filed in the future pursuant to ordering paragraph 4 shall reference this case number and shall be retained in the utility's general correspondence file.

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

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ENTERED
OCT 25 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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