

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS	)	
ELECTRIC CORPORATION FOR ANNUAL	)	CASE NO.
REVIEW OF ITS MRSM CHARGE FOR	)	2024-00031
CALENDAR YEAR 2023	)	

ORDER

On February 28, 2024, 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 2023, as well as information pursuant to the final Order in Case No. 2019-00365.<sup>2</sup> The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), requested and was granted intervention on March 8, 2024. BREC responded to one round each of discovery from Commission Staff<sup>3</sup> and the Attorney General.<sup>4</sup> On

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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. 2019-00365, *Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric 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> BREC’s Response to Commission Staff’s First Request for Information (Staff’s First Request) (filed May 1, 2024).

<sup>4</sup> BREC’s Response to the Attorney General’s First Request for Information (Attorney General’s First Request) (filed May 1, 2024).

August 27, 2024, BREC filed a Withdrawal of Request to Increase Minimum Regulatory Liability Balance.<sup>5</sup> The matter now stands submitted for a decision on the record.

### LEGAL STANDARD

In accordance with KRS 278.030, the legal standard applied in this matter is whether the rates are fair, just and reasonable.<sup>6</sup>

### 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 regulatory assets (SLM Regulatory Assets), and receiving approval to take additional steps to mitigate the loss of 850 MW aluminum smelter loads that left BREC's system in 2013-2014. In that proceeding, BREC, Kentucky Industrial Utility Customers, Inc. (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 28th 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 SLM Regulatory Assets in the prior calendar year that will reduce the SLM Regulatory Assets balance;
- Status of the amortization of the SLM Regulatory Assets;

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<sup>5</sup> BREC's Withdrawal of Request to Increase Minimum Regulatory Liability Balance (filed Aug. 27, 2024).

<sup>6</sup> KRS 278.030; *Pub. Serv. Comm'n v. Com. Ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010).

- Interest savings gained (annualized) once investment grade ratings are received from at least two of the three rating agencies;
- Status of and expected decommissioning 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>7</sup>

The final Order issued in Case No. 2020-00064 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>8</sup>

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 (LIC) Expansion tariff. In approving the application, the Commission directed BREC to file, with the annual filing mandated by Case No. 2020-00064, 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>9</sup>

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<sup>7</sup> Case No. 2020-00064, June 25, 2020 Order at 16.

<sup>8</sup> Case No. 2020-00064, June 25, 2020 Order at 21. The Order also required BREC to submit two cost of service studies (COSS) based upon National Association of Regulatory Utility Commissioners (NARUC) approved methods which was filed in Case No. 2021-00061.

<sup>9</sup> Case No. 2019-00365, Aug. 17, 2020 Order, ordering paragraph 6.

BREC's initial filing in response to Case No. 2020-00064 was docketed in Case No. 2021-00061.<sup>10</sup> The Commission authorized BREC to use \$11 million of the TIER Credit Regulatory Liability amount to reduce the SLM Regulatory Assets and to amortize \$289,407 in expenses incurred in Case No. 2019-00435<sup>11</sup> over three years and to recover this amount through the environmental surcharge mechanism (ESM). The Commission also ordered BREC to continue to file annually, by February 28th of each year, an application to adjust its MRSM rates pursuant to Case No. 2020-00064 and to include the information set forth in Case No. 2019-00365.<sup>12</sup>

BREC filed an application in Case No. 2022-00028<sup>13</sup> in compliance with the final Order in Case No. 2020-00064. The Commission authorized BREC to use \$17.6 million of the TIER Credit Regulatory Liability amount to reduce the SLM regulatory assets.<sup>14</sup>

BREC filed this application to remain in compliance with the final Orders in Case No. 2020-00064 and Case No. 2022-00028, and included information and documents related to: the matters identified in the Settlement Agreement; BREC's current Member equity balance; the minimum payments required by its loan covenants; and the

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<sup>10</sup> Case No. 2021-00061, *Electronic Application of Big Rivers Electric Corporation for Annual Report on MRSM Credit* (Ky. PSC June 9, 2021).

<sup>11</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).

<sup>12</sup> Case No. 2021-00061, June 9, 2021 Order, ordering paragraphs 1, 2, and 3.

<sup>13</sup> Case No. 2022-00028, *Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2021* (filed Feb. 28, 2022).

<sup>14</sup> Case No. 2023-00038, *Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2021* (Ky. PSC July 6, 2022), ordering paragraph 1.

reasonableness of any 2023 decommissioning costs, including detailed descriptions of all actions BREC has taken to minimize decommissioning costs.

## APPLICATION

### Case No. 2020-00064 Disclosures

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

TIER Calculation: BREC's year-end TIER calculation for calendar year 2023 was 1.95 based upon net margins of \$37.7 million.<sup>15</sup> In accordance with Case No. 2020-00064, BREC recorded a TIER Credit of \$25.8 million, resulting in reported net margins of \$11.9 million, which equates to the targeted TIER of 1.30.<sup>16</sup> Further, in accordance with Case No. 2020-00064, 60 percent, or \$15.5 million, of the TIER Credit will be recorded as a regulatory liability to reduce the SLM Regulatory Assets and 40 percent, or \$10.3 million, will flow through the MRSM Rider in 2024.<sup>17</sup>

New TIER Credit: The New TIER Credit, or \$10.3 million, will flow through the MRSM Rider in 2024 and be credited as follows: \$7.9 million to rural customers and \$2.4 million to large Industrial customers based on their respective 2023 revenue. The credit will be divided and allocated each month.<sup>18</sup>

Depreciation and Amortization Expenses for the SLM Regulatory Assets: Based on the 2023 New TIER Credit, \$15.5 million will be charged to depreciation and

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<sup>15</sup> Application, Exhibit B, Direct Testimony of Talina, R. Mathews (Mathews Direct Testimony) at 5; and Exhibit Mathews-2.

<sup>16</sup> Application, Exhibit B, Mathews Direct Testimony at 5; and Exhibit Mathews-2.

<sup>17</sup> Application, Exhibit B, Mathews Direct Testimony at 5; and Exhibit Mathews-3.

<sup>18</sup> Application, Exhibit B, Mathews Direct Testimony at 6; and Exhibit Mathews-3.

amortization expense for recovery of the SLM Regulatory Assets. The amount is first recorded as a regulatory liability and, according to Case No. 2020-00064, the regulatory liability account has a carryover balance of \$11.3 million. BREC proposed to utilize the regulatory liability in excess of \$11.3 million, or \$15.5 million, to reduce the SLM Regulatory Assets in 2023.<sup>19</sup>

Status of Amortization of SLM Regulatory Assets: As a result of amortizing the SLM regulatory Assets during 2023, the SLM Regulatory Assets identified in Case No. 2020-00064 was reduced by \$13 million. The SLM Regulatory Assets were reduced an additional \$17.6 million in 2023 utilizing the excess 2022 TIER Credit Regulatory Liability as ordered in Case No. 2023-00038.<sup>20</sup> The SLM Regulatory Assets had a balance of \$244 million in January of 2023, and a total balance of approximately \$214.5 million in December 2023, excluding the regulatory liability balance of \$26.8 million.<sup>21</sup>

Member Equity Balance: BREC stated that its member equity balance as of December 31, 2023, was \$486.9 million and the minimum required by its loan covenants was \$365 million.<sup>22</sup>

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<sup>19</sup> Application, Exhibit B, Mathews Direct Testimony at 6, 7; and Exhibit Mathews-4.

<sup>20</sup> Case No. 2023-00038, *Electronic Application of Big Rivers Electric Corporation for Annual Review of Its MRSB Charge for Calendar Year 2022* (Ky. PSC Oct. 26, 2023).

<sup>21</sup> Application, Exhibit B, Mathews Direct Testimony at 8.

<sup>22</sup> Application, Exhibit B, Mathews Direct Testimony at 9.

<b>Smelter Loss Mitigation Regulatory Assets</b>					
	<b>Coleman Station Deferred Depr</b>	<b>Reid Station Unit 1 Decommission</b>	<b>Station Two Decommission</b>	<b>Coleman Station Decommission</b>	<b>Total</b>
1/1/2023 Balance	6,463,855.11	9,446,097.67	93,997,729.85	134,158,524.32	244,066,206.95
Monthly Amortization	(6,463,855.11)	(3,319,331.19)	(3,261,062.10)	-	(13,044,248.40)
2022 Excess TIER Credit		(6,143,140.90)	(11,422,916.93)	-	(17,566,057.83)
Retire Reid Unit 1	-	16,374.42	-	-	16,374.42
Retire Station Two	-	-	461,988.69	-	461,988.69
Retire Coleman Station	-	-	-	600,936.14	600,936.14
<b>Total</b>	<b>-</b>	<b>0.00</b>	<b>79,775,739.51</b>	<b>134,759,460.46</b>	<b>214,535,199.97</b>

Coleman Station: BREC stated that total demolition of the Coleman Station is expected to be completed in July of 2024.<sup>23</sup> BREC also stated the total cost demolition of the Coleman Station was estimated to total \$600,936.<sup>24</sup>

Reid Station Unit 1: BREC stated Decommissioning of Reid Station Unit 1 began in February of 2024 and was expected to be completed in June or July of 2024.<sup>25</sup>

Station Two: BREC stated the process of insulation removal and asbestos abatement of Station Two is approximately 90 percent complete and was expected to be completed in April 2024.<sup>26</sup>

Awarded Proposals for Decommissioning: BREC stated that new proposals for decommissioning activities at Coleman Station and the Station Two ash pond were awarded in 2023.<sup>27</sup>

<sup>23</sup> Application, Exhibit C, Berry Direct Testimony at 5.

<sup>24</sup> Application, Exhibit C, Berry Direct Testimony at 6.

<sup>25</sup> Application, Exhibit C, Berry Direct Testimony at 7.

<sup>26</sup> Application, Exhibit C, Berry Direct Testimony at 7.

<sup>27</sup> Application, Exhibit C, Berry Direct Testimony at 10.

## DISCUSSION AND FINDINGS

The Commission recognizes that approval of the Settlement Agreement as well as BREC's mitigation efforts enabled BREC to regain a third investment grade rating and improve its credit ratings from all agencies. 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 \$15.5 million current balance of the regulatory liability above the \$11.3 million TIER Credit Regulatory Liability minimum balance should be approved because it further supports the reduction of the SLM Regulatory Assets. The SLM Regulatory Assets have been reduced from \$244 million in December 2022 to \$214.5 million as of December 31, 2023, net of regulatory liabilities.<sup>28</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, consider the 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.

In its Application, BREC stated that the \$11.3 million minimum regulatory liability balance should be increased by \$1.1 million, from \$11.3 million to \$12.4 million, to account for increased interest expense.<sup>29</sup> BREC stated that the minimum balance was

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<sup>28</sup> Application Exhibit B at 8–9.

<sup>29</sup> Application at 10.



calculated using the 2024 projected interest expense.<sup>30</sup> Consistent with the increased minimum balance in Case No. 2023-00038,<sup>31</sup> the proposed increase would begin in 2024.<sup>32</sup> However, on August 27, 2024, BREC filed a Withdrawal of Request to Increase Minimum Regulatory Liability Balance but provided no supporting calculations or evidence for its requested withdrawal. Because BREC did not provide sufficient supporting evidence for withdrawing its request to increase the minimum balance, the Commission rejects BREC's request for withdrawal and finds the revised minimum regulatory liability balance increase from \$11.3 million to \$12.4 million to be reasonable. The revised 1.1 million minimum regulatory liability balance increase is reasonable because the increased minimum balance will maintain the appropriate cushion for BREC based off its increased interest expense for 2024. The balance of the regulatory liability must be sufficient in order for the regulatory liability to serve its intended purpose as a backstop for BREC to meet its TIER requirements.

IT IS THEREFORE ORDERED that:

1. BREC's withdrawal of its request to increase the minimum regulatory liability balance is denied.
2. BREC's proposed modification to increase the regulatory liability balance by \$1.1 million is approved, and the revised minimum regulatory liability balance will be \$12.4 million starting in 2024.

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<sup>30</sup> BREC's Response to Staff's First Request, Item 1.

<sup>31</sup> Case No. 2023-00038, October 26, 2023 Order.

<sup>32</sup> Application at 10.

3. BREC is authorized to use \$15.5 million of the TIER Credit Regulatory Liability amount to reduce the SLM Regulatory Assets.

4. BREC shall continue to file annually, by February 28th, 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.

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

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PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Commissioner

  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Case No. 2024-00031

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