

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        | ) | 2023-00038 |
| CALENDAR YEAR 2022                   | ) |            |

ORDER

On February 28, 2023, 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 2022, as well as information pursuant to the final Orders 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 16, 2023. BREC responded to one round of discovery from Commission Staff and the Attorney General. The matter now stands submitted for a decision.

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>3</sup>

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

## 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., 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 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;
- 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 & Lights (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>

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<sup>4</sup> Case No. 2020-00064, June 25, 2020 final Order at 16.

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>

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 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>6</sup>

BREC’s initial filing in response to Case No. 2020-00064 was docketed in Case No. 2021-00061.<sup>7</sup> The Commission authorized BREC to use \$11.0 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>8</sup> over three years and to recover

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<sup>5</sup> Case No. 2020-00064, June 25, 2020 final 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>6</sup> Case No. 2019-00365, *Big Rivers Electric Corporation and Meade County Rural Electric Corporation and Meade County Rural Electric Cooperative Corporation* (Ky. PSC Aug. 17, 2020), ordering paragraph 6.

<sup>7</sup> Case No. 2021-00061, *Electronic Application of Big Rivers Electric Corporation for Annual Report on MRSM Credit*, (Ky. PSC June 9, 2021).

<sup>8</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*

this amount through the environmental surcharge mechanism. The Commission also ordered BREC to continue to file annually, by February 28, 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>9</sup>

BREC filed an application in Case No. 2022-00028 in compliance with the final Order in Case No. 2020-00064. The Commission authorized BREC to use \$26.7 million of the TIER Credit Regulatory Liability amount to reduce the SLM regulatory assets.<sup>10</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 end the minimum required by its loan covenants, the reasonableness of any 2022 decommissioning costs, and detailed descriptions of all actions BREC has taken to minimize decommissioning costs.

#### APPLICATION

##### Case No. 2020-00064:

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

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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).

<sup>9</sup> Case No. 2021-00061, *Big Rivers Electric Corporation* (Ky. PSC June 9, 2021), ordering paragraphs 1, 2, and 3.

<sup>10</sup> Case No. 2022-00028, *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.

TIER Calculation: BREC's year-end TIER calculation for calendar year 2022 was 1.93 based upon net margins of \$43.3 million.<sup>11</sup> In accordance with Case No. 2020-00064, BREC recorded a TIER Credit of \$29.3 million, resulting in reported net margins of \$14.0 million, which equates to the targeted TIER of 1.30.<sup>12</sup> Further, in accordance with Case No. 2020-00064, 60 percent, or \$17.6 million, of the TIER Credit will be recorded as a regulatory liability to reduce the SLM Regulatory Assets and 40 percent, or \$11.7 million, will flow through the MRSM Rider in 2023.<sup>13</sup>

New TIER Credit: The New TIER Credit, or \$11.7 million, will flow through the MRSM Rider in 2023 and be credited as follows: \$9.2 million to Rural customers and \$2.5 million to Large Industrial customers based on their respective 2022 revenue. The credit will be divided and allocated each month.<sup>14</sup>

Depreciation and Amortization Expenses for the SLM Regulatory Assets: Based on the 2022 New TIER Credit, \$17.6 million will be charged to depreciation and 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 \$9 million. BREC proposed to utilize the regulatory liability in excess of \$9 million, or \$17.6 million, to reduce the SLM Regulatory Assets in 2023.<sup>15</sup>

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<sup>11</sup> Application, Exhibit B, Direct Testimony of Talina, R. Mathews (Mathews Direct Testimony), at 5; and Exhibit Mathews-2.

<sup>12</sup> Application, Exhibit B, Mathews Direct Testimony at 5; and Exhibit Mathews-2.

<sup>13</sup> Application, Exhibit B, Mathews Direct Testimony at 5; and Exhibit Mathews-3.

<sup>14</sup> Application, Exhibit B, Mathews Direct Testimony at 6; and Exhibit Mathews-3.

<sup>15</sup> Application, Exhibit B, Mathews Direct Testimony at 6, 7; and Exhibit Mathews-4.

Status of Amortization of SLM Regulatory Assets: As a result of amortizing the SLM regulatory Assets during 2022, the SLM Regulatory Assets identified in Case No. 2020-00064 was reduced by \$13 million. The SLM Regulatory Assets were reduced an additional \$26.7 million in 2022 utilizing the excess 2021 TIER Credit Regulatory Liability as ordered in Case No. 2022-00028. The SLM Regulatory Assets had a balance of \$281.1 million in January of 2022, and a total balance of approximately \$244.0 million in December 2022, excluding the regulator liability balance of \$26.6 million.<sup>16</sup>

Interest Savings Gained (Annualized) Once Investment Grade Ratings are Received from at Least Two of the Three Rating Agencies: As a result of credit ratings upgrades from S&P Global Ratings, Fitch Ratings, and Moody's Investors Services, BREC transitioned to a Pricing Level III on its CFC Revolving Credit facility. As a result, BREC was able to reduce fees, which results in annual interest savings of approximately \$260,000.<sup>17</sup>

Coleman Station: BREC stated that complete demolition of the Coleman Station is expected to be completed in June of 2023.<sup>18</sup> BREC also stated that the anticipated costs have not changed since Case No. 2022-00028 was filed, which remains at \$2,702,345.<sup>19</sup>

Reid Station Unit 1: BREC stated that it secured a contract in 2022 for the full demolition of Reid Station Unit 1 and the concrete stack in exchange for any funds from

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<sup>16</sup> Application, Exhibit B, Mathews Direct Testimony at 8.

<sup>17</sup> Application, Exhibit B, Mathews Direct Testimony at 9; and Exhibit Mathews-5.

<sup>18</sup> Application, Exhibit C, Direct Testimony of Nathaniel A. Berry (Berry Direct Testimony), at 6.

<sup>19</sup> Application, Exhibit C, Berry Direct Testimony at 6.

the sale of the resulting scrap. BREC stated this demolition should be completed by the end 2023.<sup>20</sup>

Station Two: BREC stated that it is starting the decommissioning by transitioning the site into a safe, dark, and dry status. BREC stated that Henderson Utility Commission has approved the contract for insulation removal, asbestos abatement, and structural demotion as of January 31, 2022. BREC expects the project to be completed by the end of 2023.<sup>21</sup>

Awarded Proposals for Decommissioning: BREC stated that no new proposals for decommissioning were accepted in 2022.<sup>22</sup>

### 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. Additionally, it is apparent that the new TIER Credit is operating as envisioned in Case No. 2020-00064 and has resulted in savings to BREC's end-use customers. Therefore, the Commission finds that, at this time, no adjustments or modifications to the MRSMS tariff are warranted. Additionally, the Commission finds that applying the \$17.6 million above the \$9.0 million TIER Credit Regulatory Liability should be approved because it further supports the reduction of the SLM Regulatory Assets. The SLM Regulatory Assets have been reduced from \$281.1 million in December 2021 to \$217.5 million, net of regulatory liabilities.

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<sup>20</sup> Application, Exhibit C, Berry Direct Testimony at 7.

<sup>21</sup> Application, Exhibit C, Berry Direct Testimony at 8.

<sup>22</sup> Application, Exhibit C, Berry Direct Testimony at 11.

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.

BREC stated that the \$9.0 million minimum regulatory liability should be increased by \$2.3 million to account for the net impact of an additional loan and interest rate savings due to upgraded credit ratings.<sup>23</sup> The Commission finds that this request is reasonable and the revised minimum regulatory liability balance will be \$11.3 million. Finally, the Commission commends BREC for its continued attempts to reduce liabilities and risks for consumers through the actions explained in the application in this matter. The Commission will work diligently in future MSRM matters to timely provide BREC direction and final decisions.

IT IS THEREFORE ORDERED that:

1. BREC is authorized to use \$17.6 million of the TIER Credit Regulatory Liability amount to reduce the SLM Regulatory Assets.
2. BREC's proposed modification to increase the regulatory liability balance by \$2.3 million is approved, and the revised minimum regulatory liability balance will be \$11.3 million.
3. BREC shall continue to file annually, by February 28, an application to adjust its MRSRM rates pursuant to ordering paragraph 10 of the June 25, 2020 Order in

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<sup>23</sup> BREC's response to Commission Staff's First Request, Item 3.



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.

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PUBLIC SERVICE COMMISSION

  
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Vice Chairman

  
Commissioner



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