

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NATIONAL-SOUTHWIRE ALUMINUM COMPANY)	
)	
V.)	CASE NO. 89-376
)	
BIG RIVERS ELECTRIC CORPORATION AND)	
GREEN RIVER ELECTRIC CORPORATION)	

O R D E R

On December 21, 1989, National-Southwire Aluminum Company ("NSA") filed a complaint, pursuant to KRS 278.260 and 807 KAR 5:001, Section 12, naming Big Rivers Electric Corporation ("Big Rivers"), Green River Electric Corporation ("Green River"), Alcan Aluminum Corporation ("Alcan"), and Henderson-Union Rural Electric Cooperative Corporation ("Henderson-Union") as respondents. Big Rivers is a generating and transmission cooperative that supplies full power requirements service to four distribution cooperatives, including Green River and Henderson-Union. NSA operates an aluminum smelter and receives retail electric service from Green River. Alcan also operates a smelter and is served by Henderson-Union.

NSA states that the purpose of its complaint is to seek re-examination of the Variable Smelter Power Rate ("Variable Rate") established by the Commission's August 10, 1987 Order in

Case No. 9885.¹ The Variable Rate is an electric rate that fluctuates with the market price of aluminum and is applicable to all power consumed by NSA and Alcan. As grounds for the complaint, NSA alleges the following:

The Variable Rate was based on a set of assumptions regarding costs and revenues to NSA in the production of aluminum which, due to large increases in non-power costs to NSA in producing aluminum, are no longer valid, resulting in a Variable Rate which causes NSA severe economic losses at almost any foreseeable price for aluminum. The Commission in its August 10, 1987 Order in Case No. 9885 stated that it would review the Variable Rate subsequent to Big Rivers filing of rate schedules on July 1, 1990 with a view toward making an appropriate adjustment. The severe economic hardships faced by NSA at this time warrant the Commission's immediate alteration of the Variable Rate to prevent NSA from being forced to curtail operations at its Hawesville, Kentucky smelter in April 1990.²

NSA further claims that the Variable Rate was established on the basis of what NSA could afford to pay and that due to higher costs for alumina, NSA can no longer afford to pay the Variable Rate.

NSA's complaint discloses that recent discussions were held with Big Rivers in an attempt to negotiate modifications to the Variable Rate, including a provision for an escrow mechanism. NSA alleges that an agreement in principal was reached with Big Rivers regarding modifications to the Variable Rate, but the agreement was subsequently rejected by Big Rivers' creditors. NSA states that had Big Rivers' creditors accepted this settlement, NSA

¹ Case No. 9885, An Investigation of Big Rivers Electric Corporation's Rates for Wholesale Electric Service.

² NSA complaint, pages 1-2.

"could order alumina for April 1990 and beyond without fear of losing the Variable Rate." NSA proceeds to discuss the near term projected market price for aluminum, states that Big Rivers' future revenues may well be insufficient to pay its debt service and other fixed charges, and concludes that it is "unwilling to make new commitments for alumina in such circumstances."³

The Commission has statutory jurisdiction over any complaint against a utility that a rate is unreasonable. KRS 278.260. The Commission's regulations governing the filing of complaints, 807 KAR 5:001, Section 12(c), require that the complaint state "fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practical, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the Commission fully with the details of the alleged violation." Utilizing this regulatory scheme, the Commission must undertake a review of NSA's complaint.

A review of the substance of NSA's complaint reveals that it fails to state fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made. NSA makes no complaint regarding any act or omission of Big Rivers, Green River, Henderson-Union, or Alcan. Rather, the thrust of NSA's complaint is that the cost of alumina, one of the major components in producing aluminum, has substantially

³ NSA complaint, page 10.

increased since the Variable Rate was established. Citing this cost increase, NSA's complaint requests "an immediate review by the Commission of the August 1987 Order insofar as that order determined that NSA's non-power production costs would enable it to afford the power costs produced by the Variable Rate."⁴ Therefore, the Commission finds that NSA's complaint fails to allege sufficient facts to establish a prima facie case against any of the named respondents.

In establishing the Variable Rate in Case No. 9885, the Commission was of the opinion that such a rate, in combination with the financial workout plan agreed to by Big Rivers' creditors, would lead to the long-term resolution of Big Rivers' financial difficulties while providing for the economic viability of its two major customers, NSA and Alcan. Further, the Commission recognized in 1987 that the performance of the Variable Rate would need to be reviewed in conjunction with Big Rivers' filing of its third step rate request on July 1, 1990. The Commission's reading of NSA's complaint indicates that there may be sufficient justification to advance the July 1990 review of the Variable Rate. Consequently, the Commission will treat NSA's complaint as a motion to advance the review of the Variable Rate. The Commission will require Big Rivers, Green River, Henderson-Union, and Alcan to file responses to NSA's motion seeking an immediate review of the Variable Rate. NSA further states that

⁴ Id.

since the Rural Electrification Administration ("REA") has previously asserted its authority to disapprove modifications of the Variable Rate, input and participation by the REA should be invited. The Commission finds merit in NSA's suggestion. A copy of this Order will be served on the REA for the purposes of encouraging the REA to become a party and express its views on the issues now pending. Other interested persons are also encouraged to file responses to NSA's motion.

The Commission further notes that NSA's complaint relies substantially upon financial information which is claimed to be confidential and not subject to public disclosure. NSA has filed a petition for confidentiality pursuant to 807 KAR 5:001, Section 7. Pending a review of any response to NSA's petition for confidentiality, the Commission strongly encourages NSA to develop a confidentiality agreement similar to that utilized in Case No. 9885 and to make the confidential information available to those persons willing to sign a confidentiality agreement. The use of such a confidentiality agreement will enable those persons filing responses to NSA's motion to have the benefit of the financial information supporting the motion.


IT IS THEREFORE ORDERED that:


1. Big Rivers, Green River, Henderson-Union, and Alcan shall respond within 7 days of the date of this Order to NSA's motion requesting an immediate review of the Variable Rate. Responses may also be filed within this time period by the REA and any other interested persons.

2. Responses to NSA's petition for confidentiality shall be filed within 10 days of the date of this Order.

Done at Frankfort, Kentucky, this 8th day of January, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director