

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NATIONAL-SOUTHWIRE ALUMINUM COMPANY)

COMPLAINANT)

V.)

CASE NO. 89-376)

BIG RIVERS ELECTRIC CORPORATION,)
GREEN RIVER ELECTRIC CORPORATION,)
ALCAN ALUMINUM CORPORATION)
AND HENDERSON-UNION RURAL ELECTRIC)
COOPERATIVE)

DEFENDANTS

O R D E R

On March 2, 1990, Big Rivers filed a Joint Motion, on behalf of itself and National-Southwire Aluminum Company ("NSA"), Alcan Aluminum Corporation ("Alcan"), Green River Electric Corporation ("Green River") and Henderson-Union Rural Electric Cooperative Corporation ("Henderson-Union"), requesting the Commission to accept a Settlement Agreement as a full and complete resolution of the issues presented by NSA in this complaint proceeding. The Settlement Agreement was entered into by Big Rivers, NSA and Alcan (collectively the "Smelters"), and the distribution cooperatives that provide electric service to the smelters. The Settlement Agreement was negotiated with the assistance of Big Rivers' creditors, the Rural Electrification Administration and two New

York banks (collectively the "Creditors"), all of whom have concurred with the terms of the agreement.

The substance of the Settlement Agreement had previously been discussed during an informal conference on February 27, 1990 at the Commission's offices. In response to questions asked at that conference, Big Rivers filed on March 9, 1990 detailed financial information in support of the Settlement Agreement. A second informal conference was held on March 14, 1990 at Big Rivers' offices for the purpose of discussing the financial information already of record and for Big Rivers to present additional financial analyses. Copies of these additional analyses were subsequently filed with the Commission.

The Settlement Agreement provides that the Variable Aluminum Smelter Rate ("Variable Rate"), established by the Commission in 1987 in Case No. 9885¹ will continue in effect for the remainder of its 10 year term subject to the addition of a balancing account. The purpose of the balancing account is to ensure that the total power bills paid by the smelters between January 1990 and August 1997 are no greater than, nor less than, the amounts that were anticipated to be paid under the Bird illustrative aluminum price scenario. The Bird illustrative price scenario, submitted in Case No. 9885 by the Commission's expert witness, Anthony Bird, formed the foundation upon which the Variable Rate was designed.

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

Utilizing the Bird illustrative price scenario for the period 1990-1997, the Smelters will pay an average power rate of 29.1285 mills per KWH. The Settlement Agreement requires the Smelters to continue paying for power in accordance with the Variable Rate but payments above 29.1285 mills will be credited to the balancing account and payments below will be debited to the account. The credits or debits will be flowed back to or collected from the Smelters over the remaining term of the Variable Rate. The inclusion of the balancing account will obviate the need for the Commission to review the operation of the Variable Rate during Big Rivers' third step rate case to be filed by July 1, 1990.

The Settlement Agreement was designed to enable Big Rivers to collect the revenues needed to fulfill its obligation under the debt Restructuring Agreement negotiated with the Creditors and approved by the Commission in Case No. 10217.² The Creditors have also agreed to significant modifications of the Restructuring Agreement that will greatly benefit Big Rivers and all its customers by reducing the possibility of a default. The Restructuring Agreement has been revised to state that through December 1997, if Big Rivers' debt payments are no more than \$18 million less than they otherwise should be, no event of default will have occurred. Further, the Creditors have agreed to add a

² Case No. 10217, Big Rivers Electric Corporation's Application for Approval of Restructuring Agreement and for Authority to Issue Notes or Other Evidences of Indebtedness Pursuant Thereto.

"nondisturbance" clause which will prevent the creditors from modifying or terminating the Variable Rate prior to August 1997.

The Smelters have each agreed to provide additional security to Big Rivers to further guarantee their respective obligations to pay minimum demand charges pursuant to long term power contracts. Furthermore, if the Settlement Agreement is approved by the Commission, the Smelters have agreed to voluntarily dismiss their pending judicial challenges to prior Commission Orders.

On March 9, 1990, the Commission entered an Order giving notice to all parties that if a hearing on the Settlement Agreement was desired, a request for a hearing had to be filed by March 15, 1990. No party requested a hearing, but the Attorney General's Office, Utility and Rate Intervention Division ("AG"), did file a statement of position. The AG stated that he "is not opposed to the Settlement Agreement between Big Rivers, its co-ops and the smelters resolving their 'disputes over variable electric rates for primary aluminum smelters.'"³

The Commission further notes that on February 26, 1990, the AG filed a motion requesting the Commission to clarify its authority to convene the February 27, 1990 informal conference and to establish rules and parameters for conducting conferences. The Commission's authority to convene conferences is clearly and explicitly set forth in its regulations, 807 KAR 5:001, Section 4(4). Regarding the establishment of rules and parameters for

³ AG Statement of Position, page 2.

conducting conferences, the Commission finds that the AG has failed to demonstrate good cause to justify its requests. The sole basis cited in the AG's motion is a concern that a party may be held to have waived its rights as a result of participating in a conference. Waiver is a factual issue that must be determined on a case by case basis. Therefore, the issue of waiver of rights is incapable of being resolved by establishing rules and parameters for conducting hearings.

Based on the evidence of record and being advised, the Commission hereby finds that the Settlement Agreement in general, and the provision to add a balancing account to the Variable Rate in particular, ensures Big Rivers' continued financial recovery while eliminating any possibility of overcharging the Smelters for power. Consequently, the Settlement Agreement results in rates that are fair, just, and reasonable. Furthermore, the modifications to the Restructuring Agreement will greatly benefit all customers by reducing the risk of a default. Therefore, the Commission hereby approves the Settlement Agreement, including the amended power contracts, the revised Variable Rate through August 1997, and, pursuant to KRS 278.300, the Restructuring Agreement amendment. More specifically, the Commission approves each agreement and document, listed in the Settlement Agreement at pages 2-4, necessary and incidental to the implementation of the Settlement Agreement.

IT IS THEREFORE ORDERED that:

1. The Joint Motion filed by Big Rivers be and it hereby is granted.

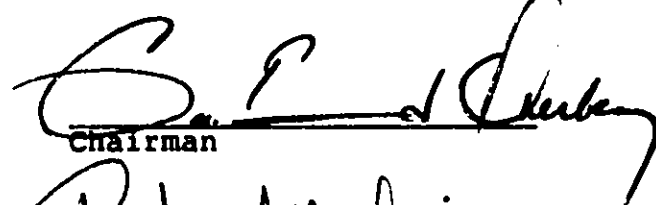
2. The Settlement Agreement and all agreements and documents listed therein at pages 2-4, including but not limited to the amended power contracts, the revised Variable Rate through August 1997, and the Restructuring Agreement amendments, be and they hereby are approved.

3. NSA's complaint be and it hereby is dismissed as settled.

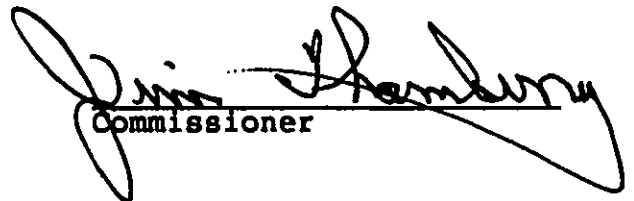
4. Big Rivers, Green River, and Henderson-Union shall file, within 30 days of the date of this Order, revised tariff sheets setting forth the revised Variable Rate through August 1997 approved herein, and shall further file copies of all duly executed amended power contracts.

Done at Frankfort, Kentucky, this 23rd day of March, 1990.

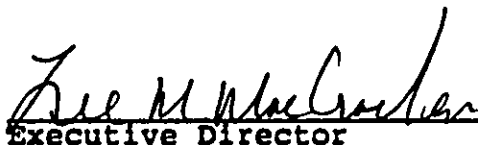
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director