

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|-------------------------------------|---|-----------------|
| APPLICATION OF BIG RIVERS ELECTRIC |) | |
| CORPORATION FOR AN ORDER APPROVING |) | |
| FUEL ADJUSTMENT CLAUSE PASS THROUGH |) | CASE NO. 96-215 |
| OF FUNDS ORDERED ESCROWED IN |) | |
| LITIGATION WITH COSTAIN COAL, INC. |) | |

O R D E R

On May 17, 1996, Big Rivers Electric Corporation ("Big Rivers") applied for approval to pass through its fuel adjustment clause ("FAC") \$2,278,822.70 that Henderson Circuit Court had ordered deposited to that court pending resolution of litigation between Big Rivers and Costain Coal, Inc. ("Costain") over the cost of coal provided under Contracts No. 528 and No. 865.¹ Contending that changes in the method which Costain used to mine the coal in question required a reduction in the contract price of coal, Big Rivers had unilaterally reduced its payments to Costain. Having made the required payment of the disputed amount, Big Rivers sought recovery of these costs from its ratepayers.

¹ Costain Coal, Inc. v. Big Rivers Electric Corp., No. 96-CI-00052 (Henderson Cir. Ct. April 24, 1996). In an Order dated June 20, 1996, the Henderson Circuit Court ordered that the monies in escrow be released to Costain and that Big Rivers pay the full contract price for coal received under Contracts No. 528 and 865 until an arbitrator or the court had decided the controversy.

While its application was pending before the Commission, Big Rivers filed for protection under Chapter 11 of the United States Bankruptcy Code. After developing a plan of reorganization, which the U.S. Bankruptcy Court confirmed, Big Rivers applied for a general rate adjustment and approval of certain transactions necessary to implement this plan.² Big Rivers' proposed rate adjustment included, inter alia, the elimination of its FAC. Upon the motion of Kentucky Industrial Utility Customers and without objection from any party to this proceeding, the Commission held this case in abeyance pending completion of that proceeding.³ On April 30, 1998, the Commission authorized, upon completion of the Lease Transaction between Big Rivers and LG&E Energy, new rates for Big Rivers and the elimination of Big Rivers' FAC.⁴ That transaction occurred on July 24, 1998.

The Commission's action renders the current case at bar moot. As Big Rivers' filed rate schedule no longer contains an FAC, no rate mechanism exists to pass the fuel costs associated with the \$2,278,822.70 payment to Costain to Big Rivers' customers and the Commission is without the authority to grant the requested relief.

² Case No. 97-204, Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. For Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction (filed June 30, 1997).

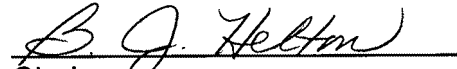
³ Order of July 21, 1997.


⁴ See Order of April 30, 1998 at 44 – 45 (establishing permanent rates); Order of June 11, 1998 at 2 - 4 (granting petitions for rehearing and establishing effective date for permanent rates).

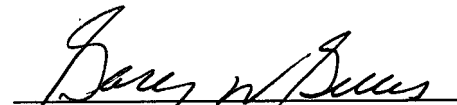
IT IS THEREFORE ORDERED that Big Rivers' Application is dismissed as moot.

Done at Frankfort, Kentucky, this 6th day of August, 1998.

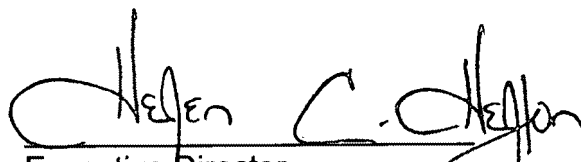
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director