COMMONWEALTH OF KENTUCKY

BEFORE THE

KENTUCKY PUBLIC SERVICE COMMISSION

BIG RIVERS ELECTRIC CORPORATION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE	)	
COMMISSION OF THE APPLICATION OF	)	CASE NO. 92-490
THE FUEL ADJUSTMENT CLAUSE OF	)	CASE NO. 92-490-A
BIG RIVERS ELECTRIC CORPORATION	)	CASE NO. 90-360-C
FROM NOVEMBER 1, 1991 TO APRIL 30, 1992	)	

DIRECT TESTIMONY

AND EXHIBITS

OF

LANE KOLLEN

REVISED PURSUANT TO

COMMISSION ORDER

DATED OCTOBER 1, 1993

ON BEHALF OF

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS

AND

KENTUCKY ATTORNEY GENERAL

KENNEDY AND ASSOCIATES
ATLANTA, GEORGIA

OCTOBER 1993

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TABLE OF CONTENTS

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REVISED DIRECT TESTIMONY OF LANE KOLLEN

I. QUALIFICATIONS AND SUMMARY

Q. Please state your name and business address.

A. My name is Lane Kollen. My business address is Kennedy and Associates, Suite 475, 35 Glenlake Parkway, Atlanta, Georgia 30328.

Q. What is your occupation and by whom are you employed?

A. I am a utility rate and planning consultant holding the position of Vice President and Principal with the firm of Kennedy and Associates.

Q. Please describe your education and professional experience.

A. I received my Bachelor of Business Administration in Accounting from the University of Toledo. I also received a Master of Business Administration from the University of Toledo. I am a Certified Management Accountant ("CMA") and a Certified Public Accountant ("CPA").

Since 1986, I have held various positions with Kennedy and Associates. I specialize in revenue requirements analyses, taxes, the evaluation of rate and financial impacts of traditional and non-traditional ratemaking, and other utility strategic, operational, financial, and accounting issues.

From 1983 to 1986, I held various positions with the consulting group at Energy Management Associates. I specialized in utility finance, utility accounting issues, and computer financial modeling. I also directed consulting and software projects utilizing PROSCREEN II and ACUMEN proprietary software products to support utility rate case filings, budgets, internal management and external reporting, and strategic and financial analyses.

From 1976 to 1983, I held various positions with The Toledo Edison Company in the Accounting and Corporate Planning Divisions. From 1980 to 1983, I was responsible for the Company's financial modeling and financial evaluation of the Company's strategic plans. In addition, I was responsible for the preparation of the capital budget, various forecast filings with regulatory agencies, and assistance in rate and other strategy formulation. I utilized the strategic planning model

PROSCREEN II, the production costing model, PROMOD III, and other software products to evaluate capacity swaps, sales, sale/leasebacks, cancellations, write-offs, unit power sales, and long term system sales, among other strategic options. From 1976 to 1980, I held various other positions in the Budget and Accounting Reports, Property Accounting, Tax Accounting, and Internal Audit sections of the Accounting Division.

I have appeared as an expert witness on accounting, finance, and planning issues before regulatory commissions and courts in numerous states on more than fifty occasions. I have appeared before the Kentucky Public Service Commission on many occasions including the last three Big Rivers base rate proceedings, Case Nos. 10217, 9885 and 9613. In addition, I have developed and presented papers at various industry conferences on utility rate, accounting, and tax issues. My qualifications and regulatory appearances are further detailed in my Exhibit ___ (LK-1).

Q. **Please describe the firm of Kennedy and Associates.**

A. Kennedy and Associates provides consulting services in the electric, gas, and telecommunications utilities industries. Our clients include state agencies and industrial electricity and gas consumers. The firm provides expertise in system planning, load forecasting, financial analysis, revenue requirements, cost of service, and rate design.

Q. On whose behalf are you appearing and what is the purpose of this testimony?

A. I am appearing on behalf of the Kentucky Industrial Utility Customers ("KIUC"), a group of the largest industrial consumers on the Big Rivers' system and the Kentucky Attorney General ("AG"), by and through his Utility and Rate Intervention Division.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to summarize the disallowances recommended by the KIUC and AG witnesses and to address the appropriate regulatory policy for restitution of the excessive fuel costs; to address illegal and improper payments; to address reclamation, closing, and accelerated recovery of Retiki Mine costs; to address book to physical inventory writedowns at the Green Plant; and to discuss problems with the Big Rivers' control process and to provide recommendations for improvement.

Q. Please summarize your testimony.

A. My testimony is structured into five additional sections according to subject area. My recommendations are summarized by section as follows:

<u>Summary of Recommended Disallowances and Restitution</u>

The KIUC and AG witnesses recommend disallowances for the period November 1, 1990 through April 30, 1993 of $39.452 million ($45.447 million including interest through April 30, 1993). I recommend that the overcharges for the two and a half year period be returned to ratepayers through future bill credits. I recommend that continuing overcharges for excessive and unreasonable costs be disallowed and future rates reduced accordingly. In addition, I summarize alternative disallowances recommended by the KIUC and AG witnesses in the event that their primary recommendations are not adopted.

<u>Illegal, Improper, and Questionable Payments</u>

I recommend that the Commission, as a matter of public policy, disallow and return to ratepayers the cost of all illegal, improper, and questionable payments made by Big Rivers' suppliers directly or indirectly, paid by Big Rivers directly or indirectly, and charged to ratepayers through the fuel clause. The costs of illegal, improper, and questionable payments are $1.239 million for the period November 1, 1990 through April 30, 1993 ($1.417 million including interest through April 30, 1993), and $0.300 million annually for the period subsequent to April 30, 1993.

<u>Reclamation, Closing, and Accelerated Recovery of Retiki Mine Costs</u>

I recommend that the Commission not allow fuel clause recovery of the Retiki Mine reclamation, closing, and accelerated recovery of other costs demanded by MAPCO, the owner of the mine. The costs incurred during the period November 1, 1990 through April 30, 1993 and recovered through the fuel clause total at least $0.835 million ($0.952 million including interest through April 30, 1993). These amounts should be disallowed and refunded to the Company's ratepayers. Payment of these costs was not and is not required under the terms of the contract. Big Rivers should be directed to litigate this issue with MAPCO if necessary.

Book to Physical Inventory Writedowns at Green Plant

The effect on fuel costs of the book to physical writedowns of coal inventory at the Green Plant during the period November 1, 1990 through April 30, 1993 should be disallowed and the overcharges refunded to the ratepayers. A significant percentage of the coal Big Rivers had recorded on its books as purchases and included in inventory simply did not physically exist. The effect on fuel expense is approximately $1.677 million ($1.943 million including interest through April 30, 1993) based upon estimates included in the Overland Audit Report[1] as modified by the testimony of KIUC and AG witness Mr. Klepper.

Problems with Control Process and Recommendations for Improvement

I recommend that several steps be taken to improve the control process at Big Rivers to assure that the problems and excessive coal costs are not perpetuated or revisited upon the Big Rivers' ratepayers in the future.

[1] Overland Audit Report, pages 12 - 8, Endnote 21.

First, the Board of Directors should take a more active role in the management of Big Rivers. It should also retain independent counsel, energize the Audit Committee, and reactivate the Coal Committee.

Second, the Company should introduce more dispersion of responsibilities (separation of duties), actively and aggressively review all existing coal contracts for price reductions or mitigation of increases, and if necessary, obtain independent oversight of the entire fuel procurement process.

Third, the Internal Audit function should be expanded and focused on coal procurement and fraud detection. Its independence should be enhanced to assure that its functions are not redirected by management or otherwise compromised.

Fourth, the external audit function should be directed to expand its review of coal contracts and costs and its search for fraud. The external audit functions should also be reviewed for conflicts of interest with respect to Big Rivers and its suppliers.

Fifth, coal for the Green Plant should be weighed and sampled at the Green Plant site by Big Rivers rather than at the Retiki Mine by MAPCO.

Sixth, cash advances and/or loans to suppliers should be strictly prohibited by the Board of Directors.

Seventh, the Customer Working Group, proposed previously by Mr. Klepper on behalf of KIUC and AG, should be actively involved in straightening out the coal procurement fiasco and the review of contracts and coal supplies.

Finally, the Commission should aggressively utilize its regulatory oversight capability to ensure that Big Rivers implements these recommendations and to protect Big Rivers' ratepayers from excessive costs in the future.

II. SUMMARY OF RECOMMENDED DISALLOWANCES

Q. Please summarize the disallowances recommended by the KIUC and AG witnesses.

A. I have summarized the recommended disallowances on the tables that follow. Disallowances were computed by the KIUC and AG witnesses for the period November 1, 1990 through April 30, 1993 in accordance with the Commission's order dated October 1, 1993. Disallowances for prior periods will be the subject of a subsequent proceeding. KIUC and AG witnesses also recommend disallowances for excessive costs that continue to be incurred by Big Rivers since the April 30, 1993 date. In addition, rates should be reduced prospectively to prevent continuing recovery of excessive and unreasonable fuel costs.

Interest at 12% was computed by the KIUC and AG witnesses through April 30, 1993 on the excessive costs for the two and a half year period. Interest would continue to run on those overcharges as well as the overcharges continuing subsequent to April 30, 1993 until restitution to the ratepayers is completed.

SUMMARY OF RECOMMENDED DISALLOWANCES INCLUDING INTEREST NOVEMBER 1, 1990 THROUGH APRIL 30, 1993

($million)

Description of Disallowance/KIUC Witness	Excessive Costs 11/1/90 - 4/30/93	Interest through 4/30/93	Total Disallowance 4/30/93
Excessive coal costs under Contract 527 with Green River Coal (Falkenberg)	$30.834	$4.658	$35.492
Excessive coal costs under Contract 814 with Jim Smith Contracting (Klepper)	$1.238	$0.206	$1.444
Green River Coal and Contract 865 with Costain Coal (Falkenberg)	$2.489	$0.395	$2.884
Excessive coal costs under Contract 882 with E&M Coal (Klepper)	$0.294	$0.073	$0.367
Excessive coal costs under Contract 905 with E&M Coal (Klepper)	$0.846	$0.102	$0.948
Illegal, improper, & questionable payments (Kollen)	$1.239	$0.178	$1.417
Book to physical Inventory Writedowns at Green Plant (Klepper, Kollen)	$1.677	$0.266	$1.943
Retiki Mine closing, reclamation & other accelerated costs (Klepper, Kollen)	$0.835	$0.117	$0.952
Total	$39.452	$5.995	$45.447

The disallowances recommended by Mr. Falkenberg and summarized in the preceding tables are based upon a comparison of spot coal prices to the contract prices under Contract No. 527 and Contract No. 865. Alternatively, and as described by Mr. Falkenberg, the Commission could compute the harm based upon <u>reasonable</u> contract coal prices for 50% of the contract quantities and spot coal prices for the remaining 50%. In that event, the excessive costs and associated disallowance would be as follows:

DISALLOWANCES BASED UPON COMPARISON OF 50% SPOT/50% REASONABLE CONTRACT TO CONTRACT NOS. 527 AND 865 INCLUDING INTEREST THROUGH APRIL 30, 1993
($million)

Description of Disallowance	Excessive Costs 11/1/90 - 4/30/93	Interest through 4/30/93	Total Disallowance @ 4/30/93
Excessive coal costs under Contract 527 with Green River Coal	$27.043	$4.251	$31.294
Green River Coal and Contract 865 with Costain Coal	$1.624	$0.298	$1.922
Total	$28.667	$4.549	$33.216

Mr. Falkenberg also computed the excessive costs and associated disallowances based upon a comparison of reasonable contract prices to the actual contract prices for Contract No. 527 and Contract No. 865, summarized as follows:

DISALLOWANCES BASED UPON COMPARISON OF REASONABLE CONTRACT TO CONTRACT NOS. 527 AND 865 INCLUDING INTEREST THROUGH APRIL 30, 1993
($million)

Description of Disallowance	Excessive Costs 11/1/90-4/30/93	Interest through 4/30/93	Total Disallowance @ 4/30/93
Excessive coal costs under Contract 527 with Green River Coal	$26.086	$4.119	$30.205
Green River Coal and Contract 865 with Costain Coal	$1.400	$0.268	$1.668
Total	$27.486	$4.387	$31.873

If the Commission rejects Mr. Falkenberg's quantification recommendations for disallowances, then it should accept KIUC and AG witness Mr. Watkins' computation of harm. That computation is consistent with the Overland Audit Report, which found that the costs from Amendment No. 1 to Contract No. 527 with Green River Coal were unreasonable. In that event, the excessive costs and associated disallowance would be $7.398 million ($8.025 million including interest through April 30, 1993) for the period November 1, 1990 through April 30, 1993 rather than the amounts shown in the preceding tables.

Q. **What is the appropriate amortization period for disallowances and overcharges resulting from the excessive and unreasonable fuel costs addressed by the KIUC and AG witnesses?**

A. The appropriate amortization period would, for practical purposes, depend upon the magnitude of the prior period excessive costs. As a general principle, excessive costs should be amortized through reductions to prospective rates in as short a time frame as practicable.

I recommend that the amortization of the overcharges be equivalent to the amounts that would otherwise have been paid to the REA under the Workout Plan until the restitution plus interest is completed. This is consistent with the recommendation by KIUC and AG witness Mr. Klepper that Big Rivers be directed by the Commission to discontinue its payments to the REA until restitution to its ratepayers for the excessive and unreasonable fuel costs is completed.

Q. **Why should the REA payments be eliminated until restitution is completed?**

A. First, the REA is the de facto equity holder in Big Rivers. The REA is the only source of recovery, other than civil litigation by Big Rivers against the individuals and suppliers involved, of the excessive and unreasonable fuel costs incurred by Big Rivers.

Second, the REA assumed a direct management role, as the de facto equity holder in Big Rivers, when it reviewed and approved the various coal contracts and approved the selection of the former General Manager.

Third, the REA failed in its oversight, management, and de facto equity holder roles to ensure that ratepayers were not harmed through imprudent actions by Big Rivers.

Fourth, the Commission has a statutory obligation to ensure that Big Rivers' rates are fair, just, and reasonable. The Commission can perform its statutory obligation only if there is restitution. There is no source for restitution other than the REA.

Q. How should the amortization tied to the REA payments be implemented?

A. First, the amortization should be exactly equivalent to the cash that would otherwise have gone to the REA until the restitution plus interest is completed. Under the Workout Plan, the REA takes the excess cash flow generated by revenues from Big Rivers' ratepayers and other sales. Prospective rate reductions to return prior overcharges and to prevent current overcharges to ratepayers would inherently reduce the cash available to the REA. Thus, the KIUC and AG recommendation is to temper the prospective rate reductions so that the amortization and associated prospective rate reductions do not exceed the excess cash flow that would otherwise have gone to the REA.

Second, the avoided payments should be permanently foregone by the REA. The reduction in payments to the REA represent restitution to the ratepayers of Big Rivers that should not be deferred and then added to the REA debt for future repayments. Otherwise, the ratepayers of Big Rivers would receive restitution in the near term but then would be required to pay it back with interest over the longer term. Thus, there would actually be no restitution on a present value basis.

III. ILLEGAL, IMPROPER, AND QUESTIONABLE PAYMENTS

Q. **Please summarize your recommendation with respect to illegal, improper, and questionable payments.**

A. I recommend that the Commission, as a matter of public policy, disallow and return to ratepayers the costs of all illegal, improper, and questionable payments made by Big Rivers' suppliers directly or indirectly, paid by Big Rivers directly or indirectly, and charged to ratepayers through the fuel clause. The costs of illegal, improper, and questionable payments are $1.239 million for the period November 1, 1990 through April 30, 1993 ($1.417 million including interest through April 30, 1993), and $0.300 million annually on an ongoing basis.

Q. **What are illegal, improper, and questionable payments?**

A. Illegal payments are those that are prohibited by the laws in Kentucky and the United States. Examples of illegal payments relevant to this proceeding are those outlined in the federal indictment of Mr. Eddie Brown to which he has plead guilty. The illegal payments included those to Mr. Shirley Pritchett for the purpose of influencing Mr. Bill Thorpe in contract decisions on behalf of Big Rivers.

Improper payments are those that, although perhaps legal, are made to induce or influence a person to act in a manner that is unethical, and in this case, against the interests of the ratepayers. Examples of improper payments are the consulting fee paid by Jim Smith Contracting to Mr. Bill Thorpe and the payments by Mr. Eddie Brown to the former executives of Pyramid Mining Company.

In addition, certain payments are at least questionable, although the payments are not at this time identified in indictments against either the payers or payees. Examples of questionable payments are those by Green River Coal to Mr. Charles Steele and to Mr. Harry Foster.

Throughout the remainder of this section of my testimony, I have not distinguished between illegal and improper payments since illegal payments are also improper and both should be disallowed regardless of the ultimate determinations of legality. I have, however, distinguished the known illegal and improper payments from those that are at least questionable, although the questionable payments should also be disallowed absent additional evidence supporting their legitimacy.

Q. Who are the victims of illegal, improper, and questionable payments?

A. This question is answered directly in the indictment of Mr. Eddie Brown as follows:

> **"25. The financial victims of the schemes included BREC, its members, customers and ratepayers, whose higher rates for electric power reflected in part the hidden costs of influence payments, and of coal supply costs higher than the most favorable prices that could be obtained, and other vendors of BREC, whose bids on coal supply contracts and flyash disposal agreements were not fairly evaluated in relation to E&M Coal's bids or RBT's bids."**[2]

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[2] United States of America v. Eddie Ray Brown, Indictment, page 32.

Q. How do illegal, improper, and questionable payments affect the costs paid by ratepayers?

A. The cost of such payments are recovered through the prices charged for goods and services that are sold as the result of direct or indirect payments to induce or influence the purchase of those goods and services. Thus, the cost of such payments on coal, and on delivery and disposal services are recovered by the payer through the prices paid by the Company.

The Company then recovers the hidden costs of the illegal and improper payments from its ratepayers as a cost of service in the absence of Commission action to prohibit it.

Q. As matter of public policy, should illegal, improper, and questionable payments be recovered from ratepayers in any form?

A. No. As a matter of public policy, regulatory Commissions rarely, if ever, knowingly allow utilities to recover the costs of illegal and improper activities. Thus, the costs of civil or criminal fines, and the costs of bribes, or even the costs of lobbying activities, are disallowed from recovery in both base and fuel rates.

As a matter of public policy, it is appropriate to disallow the costs of illegal, improper, and questionable payments to discourage the underlying activities and the harm to the public and ratepayers that otherwise would or could result.

Q. Is it necessary or even desirable to require a demonstration that the ratepayers have been harmed economically through illegal, improper, and questionable payments?

A. No. The economic harm standard should not be employed in this situation. That standard would circumvent public policy against illegal and improper activity and recovery of the related costs. The economic harm standard is a narrow standard focused solely on the end result, and thereby justifying any means (legal or illegal, ethical or unethical) to achieve that result. For example, it may be possible to demonstrate that there is an economic benefit to ratepayers to intentionally utilize lower cost and lower quality coal to emit higher than allowed levels of sulfur dioxide, to illegally conceal the excess emissions, to be fined by the Kentucky EPA and the federal EPA, to pay the fines, and then to collect those amounts from the ratepayers as a cost of service. The end result of this example, which is analogous to the situation in this proceeding, would clearly be to violate laws limiting pollutants and to circumvent the underlying public policy objectives.

Q. In conjunction with this proceeding, have you identified illegal, improper, and questionable payments that were recovered from ratepayers through the fuel clause?

A. Yes. I have relied primarily upon the indictment and guilty plea of Mr. Eddie Brown (the latter is replicated as my Exhibit __ (LK-3), the Overland Audit Report, and documents obtained by Overland through data requests to identify and quantify the effect on ratepayers of illegal, improper, and questionable payments flowed through the fuel clause. The following table summarizes these costs by payer/payee and according to the relevant time period.

SUMMARY OF ILLEGAL, IMPROPER, AND QUESTIONABLE PAYMENTS RECOVERED FROM RATEPAYERS
($millions)

Payer	Payee	Time Period		
		Before 11/1/90	11/1/90 - 4/30/93	After 4/30/93
Illegal and Improper Payments				
Mr. Eddie Brown	Ms. Denise Perkins	$0.098	$ --	$ --
Jim Smith Contracting	Mr. Bill Thorpe	0.500	--	--
E&M Coal	Mr. Shirley Pritchett	2.511	0.489	--
Green River Coal	Mr. Eddie Brown/ Mr. Shirley Pritchett	2.050	0.750	0.300[1]
Mr. Eddie Brown	Mr. DeMayo/Mr. Barker (Pyramid Mining)	0.291	--	--
Subtotal		$5.450	$1.239	$0.300
Other Questionable Payments				
Green River Coal	Mr. Charles Steele, Mr. Harry Foster	0.392 0.196	--	--
Green River Coal	Mr. Lester Thompson/ Blue Grass Consultants	0.332	--	--
Subtotal		$0.920	--	--
Total		$6.370	$1.239	$0.300

1. Approximate annual amount.

Q. Why have you addressed illegal, improper, and questionable payments for the period prior to November 1, 1990 given the Commission's October 1, 1993 order?

A. I have addressed the prior period for the simple, but important, reason that these payments relate directly to the contracts and the excessive and unreasonable fuel costs for the period November 1, 1990 through April 30, 1993 addressed by the KIUC and AG witnesses. These payments clearly demonstrate a pattern of corrupt activity that, although it occurred mostly in the prior period, still has a continuing and devastating effect on the ratepayers of Big Rivers. The Commissions' October 1, 1990 Order stated that:

> **". . . Big Rivers' actions prior to November 1, 1990 are not necessarily irrelevant to these proceedings. To the extent such actions may have affected fuel expenses which were charged to Big Rivers' customers through its FAC during the period under review, Commission Regulation 807 KAR 5:056 <u>requires</u> this Commission to consider them."** (emphasis added)

Q. Please describe the payments made to Ms. Denise Perkins and why these costs should be disallowed and the overcharges returned to the Company's ratepayers.

A. Mr. Eddie Brown made payments to Ms. Denise Perkins totaling $0.098 million from January 1981 through June 1988[3]. The payments were made through Embro Holdings, E&M Coal, and Rose Brothers Trucking, all companies owned by Mr. Eddie Brown. The payments to Ms. Perkins were described as wages although she never worked for any of the Brown entities.

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[3] Ibid, paragraph 30, page 34.

Ms. Perkins is the daughter of Mr. Bill Thorpe, the former General Manager of Big Rivers. Mr. Thorpe was responsible for decisions to award contracts between Big Rivers and its suppliers. Mr. Eddie Brown owned both E&M Coal and Rose Brothers Trucking. E&M Coal obtained several contracts to supply Big Rivers with coal since 1982. Rose Brothers Trucking also obtained several contracts to provide hauling services for Big Rivers since 1980.

The indictment of Mr. Eddie Brown, the charges to which he has plead guilty, describes the scheme to defraud as follows:

> **"27. It was a further object of the scheme that BREC senior executive Subject No. 3 [Thorpe] would profit from a series of payments made by BROWN to his daughter Subject No. 4 and from a series of payments made to Subject No. 3 by BROWN through another person known to the Grand Jury (hereinafter known as Subject No. 5) [Pritchett].**
>
> **28. It was part of the scheme that BROWN agreed to pay Subject No. 4 regular and repeated payments in return for Subject No. 3's favorable consideration in the awarding and maintaining of contracts between BREC and BROWN.**
>
> **29. It was further a part of the scheme that BROWN disguised these payments by making them primarily from checking accounts held in the names of Embro Holdings and Rose Brothers Trucking; by directing the payments to Subject No. 4; and by characterizing Subject No. 4 on the books and records of Embro Holdings and RBT as a clerical employee of those corporations when in fact she never provided services for either entity."**[4]

These payments by Mr. Eddie Brown to Ms. Denise Perkins were illegal according to the indictment and clearly improper. I do not recommend a disallowance in this

[4] Ibid, pages 33 - 34.

proceeding due to the time period limitation ordered by the Commission on October 1, 1993.

Q. Please describe the consulting fee paid by Jim Smith Contracting to Mr. Bill Thorpe and why this cost should be disallowed and the overcharges returned to the Company's ratepayers.

A. Jim Smith Contracting Company paid Mr. Thorpe $0.500 million in 1988 purportedly for consulting services provided to Mr. Smith in conjunction with the sale of the Louisville and Paducah Railroad, in which Mr. Jim Smith held a partial ownership interest[5]. The "consulting fee" was not disclosed to the Big Rivers Board until several years later in conjunction with an FBI investigation. This payment was in direct contravention of the Big Rivers formal conflict of interest policy in effect at the time.

In his capacity as General Manager of Big Rivers, Mr. Thorpe was responsible for the decisions to award major contracts between Big Rivers and its suppliers. Since 1981, Jim Smith Contracting Company was a major supplier to and obtained several coal supply contracts with Big Rivers. According to Overland:

> **"The consulting agreement between Jim Smith Contracting and Big Rivers' former General Manager conflicted with Big Rivers' interests and was a serious violation of the standard of conduct expected of utility executives[6].**

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[5] Op. cit, Chapter 3, page 12.

[6] Ibid, Chapter 1, page 11.

This payment to Mr. Thorpe was clearly improper, although I do not recommend a disallowance in this proceeding due to the time period limitation ordered by the Commission on October 1, 1993.

Q. Please describe the sales commission paid by E&M Coal to Mr. Shirley Pritchett and why this should be disallowed and the overcharges returned to the Company's ratepayers.

A. Mr. Eddie Brown made payments totaling over $3.000 million to Mr. Pritchett from 1981 through September 1992 as a result of an agreement between the two parties[7]. Under the agreement, dated July 7, 1980, E&M Coal agreed to pay Mr. Pritchett 2% of the sale price for all coal sold by E&M Coal to Big Rivers, with a $0.500 per ton minimum, in return for Mr. Pritchett's assistance in the sale. Big Rivers paid a total of $181.200 million to E&M Coal between 1980 and 1992. Consequently, the payments could have been as high as $3.600 million.

Mr. Pritchett was a close acquaintance of Mr. Thorpe. As General Manager of Big Rivers, Mr. Thorpe was responsible for the decisions to award contracts between Big Rivers and its suppliers. Mr. Eddie Brown owned E&M Coal, Inc. and other entities that obtained various contracts with Big Rivers since 1980.

The payments to Mr. Pritchett were for the purpose of influencing Mr. Bill Thorpe according to the indictment of Mr. Eddie Brown. That indictment states:

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[7] Op. cit, paragraph 76, page 43.

> **"76. Beginning in 1981 and continuing until in or about September 1992, BROWN made regular and repeated payments to Subject No. 5 [Pritchett] totaling in excess of $3,000,000.00, pursuant to his signed agreements and with the intent and purpose of influencing Subject No. 3 [Thorpe] in his capacity as General Manager of BREC."[8]**

In August 1993, Mr. Pritchett was indicted for bribery associated with his activities on behalf of Mr. Eddie Brown and E&M Coal to obtain contracts with Big Rivers. The indictment of Mr. Pritchett states that:

> **"19. As the object of the scheme, Pritchett, Brown and Subject No. 1 [Thorpe] agreed that, in return for the payment of bribes and kickbacks, Subject No. 1 would use his position as General Manager of Big Rivers Electric to influence the award of coal supply contracts to companies in which Brown had a financial interest . . .**
>
> **22. It was further a part of the scheme that Brown received confidential inside business information from PRITCHETT and Subject No 1; which information Brown used to unfairly improve the contract proposals submitted by entities in which Brown had a financial interest.**
>
> **23. It was further a part of the scheme that Subject No. 1 recommended to other Big Rivers Electric executives and to the Board of Directors of Big Rivers Electric that contracts be awarded to certain entities without disclosing the fact that Subject No. 1 had a personal financial interest in those contracts and decisions.**
>
> **24. It was further a part of the scheme that Brown made the bribes and kickback payments to PRITCHETT and Subject No. 1 after he received payments from Big Rivers Electric for the sale of coal by E & M Coal to Big Rivers Electric."[9]**

I have allocated the $3.000 million (at least) in improper payments to Mr. Pritchett among the time periods based upon the number of months from the beginning of

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[8] Ibid, page 43.

[9] Pages 7 - 8 of Indictment of Mr. Shirley Pritchett.

1981 through September 1992. I have allocated $2.511 million to the period prior to November 1, 1990 (approximately ten twelfths of the total through September 1992) and $0.489 million ($0.548 million including interest through April 30, 1993) to the period November 1, 1990 through April 30, 1993 (approximately two twelfths of the total until September 1992). The amount for the latter period should be disallowed and the overcharges returned to the ratepayers. I have not recommended a disallowance in this proceeding for the amount in the earlier period consistent with the time period limitation ordered by the Commission on October 1, 1993.

Q. Please describe the sales commissions paid by Green River Coal to Mr. Eddie Brown and Mr. Shirley Pritchett and why these costs should be disallowed and the overcharges returned to the Company's ratepayers.

A. Under an agreement dated January 17, 1984, Green River Coal Company paid Mr. Eddie Brown sales commissions of 1% of the amounts received by Green River Coal from Big Rivers, under Contract No. 527. This amount was approximately $0.300 million per year or a total of $2.050 million for the period prior to November 1, 1990 and $0.600 million for the period November 1, 1990 through April 30, 1993. In turn, Mr. Eddie Brown paid Mr. Pritchett a portion of the sales commissions payments that he received from Green River Coal[10].

Mr. Eddie Brown owned or held interests in various entities that obtained numerous contracts with Big Rivers. Mr. Pritchett was a close acquaintance of Mr. Thorpe.

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[10] Op. cit., Chapter 3, pages 9 - 10.

As the General Manager of Big Rivers, Mr. Thorpe was responsible for decisions to award contracts including those under which Green River Coal supplied Big Rivers throughout the 1980s.

The payments to Mr. Eddie Brown, and split with Mr. Pritchett, were clearly improper and for the purpose of influencing Mr. Thorpe. The indictment of Mr. Eddie Brown details this scheme. Mr. Eddie Brown has plead guilty to the charges outlined in the indictment.

> **"60. On or about January 17, 1984, BROWN entered into a written agreement with Green River whereby BROWN was entitled to receive on percent (1%) of all monies paid by BREC to Green River pursuant to Contract #527.**
>
> **61. On or about March 2, 1984, BROWN entered into a written agreement with Subject No. 5 [Pritchett] where by Subject No. 5 was to receive fifty percent (50%) of the monies received by BROWN from Green River. BROWN promised to make the payments well knowing that Subject No. 5 was a close associate of Subject No. 3 [Thorpe] and intending to influence Subject No. 3 in his capacity as General Manager of BREC."[11]**

In late August 1993, Mr. Pritchett was indicted in connection with this scheme. The indictment of Mr. Pritchett describes the alleged illegal and improper activity as follows:

> **"8. As the object of the scheme, PRITCHETT, Brown and Subject No. 1 agreed that, in return for the payment of bribes and kickbacks, Subject No. 1 would use his position as General Manager of Big Rivers Electric to influence the award of coal supply contracts to companies in which Brown had a financial interest . . .**

[11] United States of America v. Eddie Ray Brown, Indictment, page 40.

> **10. It was further a part of the scheme that PRITCHETT would secretly deliver a portion of the bribe and kickback payments to Subject No. 1 in the form of United States currency; all in an attempt to conceal the illegal nature of the payments and the personal benefit derived by Subject No. 1 from the payments.**
>
> **11. It was further a part of the scheme that Brown received confidential inside business information from PRITCHETT and Subject No. 1; which information Brown used to unfairly improve the contract proposals submitted by entities in which Brown had a financial interest.**
>
> **12. It was further a part of the scheme that Subject No. 1 recommended to other Big Rivers Electric executives and to the Board of Directors of Big Rivers Electric that contracts be awarded to certain entities without disclosing the fact that Subject No. 1 had a personal financial interest in those contracts and decisions."[12]**

The $0.750 million ($0.869 million including interest through April 30, 1993) for the period November 1, 1990 through April 30, 1993 should be disallowed and the overcharges returned to the ratepayers. Subsequent payments of approximately $0.300 million annually should also be disallowed and rates prospectively reduced. Any amounts already recovered from ratepayers since April 30, 1993 through the fuel clause should be refunded. I have not recommended a disallowance in this proceeding for the amount in the period prior to November 1, 1990 consistent with the time period limitation ordered by the Commission in on October 1, 1993.

Q. Please describe the royalties paid by Mr. Eddie Brown and Rose Brother's Trucking to former Pyramid Mining, Inc. executives and why this cost should be disallowed and the overcharges returned to the Company's ratepayers.

[12] Op. cit, pages 19 - 20.

A. Mr. Eddie Brown paid a total of $0.291 million to two former executives of Pyramid Mining, Inc. from 1987 through April 1990. The payments were made by Mr. Eddie Brown through Rose Brothers Trucking to the former Pyramid executives through Resource Investors Associates ("RIA"), a partnership they had formed for that purpose. This amount was calculated by subtracting the payments to Resource Management Associates ("RMA")[13] from $0.630 million, which was the total amount paid to both RMA and RIA[14].

The two former executives were Mr. DeMayo, the President, CEO, and Director of Pyramid Mining from October 1982 until May 1990 and Mr. Barker, a Vice President of Pyramid Mining from December 1981 until April 1988. The two executives were responsible for decisions involving the approval, awarding, and renewal of contracts between Pyramid Mining and its suppliers. Mr. Eddie Brown owned Embro Holdings, E&M Coal, and Rose Brothers Trucking. Rose Brothers Trucking provided hauling services to Big Rivers and to Pyramid Mining under various contracts throughout the 1980s.

The payments to RIA reflected an agreement between the former Pyramid executives and Brown for a fee of $0.25 per ton of waste from the Wilson Plant disposed by Rose Brothers Trucking at a Pyramid-controlled strip mine. Rose Brothers Trucking hauled the waste from Wilson under Big Rivers' Contract No. 891. That waste was deposited at no cost to Mr. Eddie Brown or Rose Brothers Trucking except for the illegal payments to the partnership and personal accounts of the former Pyramid Mining executives.

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[13] A partnership formed by the two Pyramid executives in 1987.

[14] United States of America v. Eddie Ray Brown, Indictment, paragraph 38, page 12.

The payments made by Mr. Eddie Brown were illegal and improper and are also the subject of the charges in the indictment to which Mr. Brown has plead guilty. Since the $0.291 million was incurred prior to November 1, 1990, and consistent with the time period limitation ordered by the Commission on October 1, 1993, I do not recommend a disallowance in this proceeding.

Q. Please describe the commissions paid by Green River Coal to Mr. Charles Steele and to Mr. Harry Foster and why these costs should be disallowed and the overcharges returned to the Company's ratepayers.

A. Green River Coal paid commissions and fees related to Contract No. 527 to Mr. Charles Steele and to Mr. Harry Foster in addition to the commissions paid to Mr. Eddie Brown previously discussed. Under an agreement dated October 30, 1981, Green River Coal Company agreed to pay Mr. Steele a fee of $0.10 per ton for all coal delivered under Contract No. 527. This amount was approximately $0.100 million to $0.120 million[15] per year, or approximately $0.400 million (based upon deliveries under the contract commencing August 1984) until the payments were discontinued in mid-1988. The commission paid to Mr. Foster for his "marketing and sales efforts" to obtain the contract with Big Rivers was $0.050 million annually.

Mr. Steele and Mr. Foster were acquaintances of the former General Manager of Big Rivers, Mr. William Thorpe. Mr. Thorpe was responsible for decisions to award contracts between Big Rivers and its suppliers. Green River Coal Company supplied coal to Big Rivers under several contracts during the 1980s.

[15] The Overland Audit Report,, Chapter 3, page 10.

Other KIUC and AG witnesses have testified that Contract No. 527 was improperly entered into and has resulted in excessive and unreasonable costs to ratepayers. Any sales commissions are thus tainted, at least by association, as questionable and perhaps illegal and improper payments. Since the $0.588 million was incurred prior to November 1, 1990, and consistent with the time period limitation ordered by the Commission on October 1, 1993, I do not recommend a disallowance in this proceeding.

Q. **Please describe the commissions paid by Green River Coal to Mr. Lester Thompson and Blue Grass Consultants and why this cost should be disallowed and the overcharges returned to the Company's ratepayers.**

A. Green River Coal Company agreed to pay consulting fees to Mr. Lester Thompson and Blue Grass Consultants, Inc. under at least two separate agreements, also in conjunction with Contract No. 527. Under the first arrangement, dated December 9, 1987, Green River Coal agreed to pay Blue Grass Consultants a fee of $0.40 per ton for all coal sold over the remaining seventeen years of Contract No. 527, or approximately $0.408 million per year[16]. Under the second agreement, dated January 1988, Green River Coal Company agreed to pay Blue Grass Consultants a consulting fee of $0.25 per ton of coal over the remaining seventeen years of Contract No. 527, or approximately $0.255 million per year[17]. Mr. Lester M. Thompson was the president of Blue Grass Consultants.

[16] Ibid, Chapter 3, page 10.

[17] Ibid, Chapter 3, page 10.

The only stated consulting activity under the contracts was to obtain a modification to Contract No. 527 to modify a productivity index component that benefited Big Rivers' ratepayers. Big Rivers, upon the recommendation of former General Manager, Mr. Bill Thorpe, acceded to that change in Contract No. 527 with no compensation. Payments were discontinued to Mr. Thompson and Blue Grass Consultants in mid-1988 due to financial difficulties experienced by Green River Coal. Mr. Thompson and Blue Grass Consultants filed suit against Green River Coal on December 21, 1988. Assuming that one half year of payment was actually made, the total paid under the two agreements before payments were discontinued was $0.332 million.

Mr. Lester Thompson is currently under indictment for influence peddling, although there are currently no charges associated with Big Rivers. In addition, the external counsel for Big Rivers has stated that federal investigators informed him that the payments to Mr. Thompson were tied to the successful outcome of Big Rivers' attempts to obtain rate recovery of the Wilson investment, again suggesting payment for influencing peddling.

Other KIUC and AG witnesses have testified that Contract No. 527 was improperly entered into and has resulted in excessive and unreasonable costs to ratepayers. Any sales commissions are thus tainted, at least by association, as questionable and perhaps illegal and improper payments. I do not recommend that the $0.332 million in payments by Green River Coal to Blue Grass Consultants be disallowed in this proceeding due to the time period limitation ordered by the Commission on October 1, 1993.

Q. Have you computed interest on the amount of overcharges for illegal, improper, and questionable payments that you recommend be disallowed and returned to ratepayers?

A. Yes, although the computation requires the utilization of assumptions regarding the precise timing of the illegal and improper payments. I have assumed, in the interests of simplicity and in the absence of information to the contrary, that the payments were made uniformly throughout the indicated payment periods. Interest was computed on an average year basis, utilizing a 12% interest rate through April 30, 1993. The computation of interest on the illegal and improper payments is detailed on my Exhibit __ (LK-2).

IV. RECLAMATION, CLOSING, AND ACCELERATED RECOVERY OF RETIKI MINE COSTS

Q. Please summarize your recommendation with respect to the Retiki Mine closing costs.

A. I recommend that the Commission not allow fuel clause recovery of the Retiki Mine reclamation, closing, and accelerated recovery of other costs demanded by MAPCO, the owner of the mine. Most of these costs are apparently prospective and would be paid and otherwise recovered through the fuel clause subsequent to October 31, 1992. The costs incurred during the period November 1, 1990 through April 30, 1993 and actually recovered through the fuel clause totaling at least $0.916 million ($1.045 million including interest through April 30, 1993) should be disallowed and refunded to the Company's ratepayers. Payment of these costs was not and is not required under the terms of the contract. Big Rivers should be directed to litigate this issue with MAPCO if necessary.

Q. Please describe Contract No. 246 between Big Rivers and Webster County Coal Corporation, a subsidiary of MAPCO, Inc.

A. Contract No. 246, also know as the MAPCO contract, is one of two contracts to supply No. 9 coal to the Green generating plant. The contract was originally entered into on July 14, 1972 with subsequent amendments in 1972, 1974, 1975, 1980, 1984, and in 1988.

The contract is different from all other Big Rivers' coal contracts since the price of the coal is dependent upon the cost of operating the mine plus a "management fee" based upon a sliding scale tied to mine productivity.

MAPCO developed the underground Retiki Mine in order to mine the reserves subject to the contract. Big Rivers was and is responsible for purchasing the entire coal production from the mine for the duration of the contract, although MAPCO may also sell to parties other than Big Rivers.

Q. **Please describe the provisions of Contract No. 246 that provide for recovery of the mine operating costs.**

A. Section 2.09(a) describes the purchase price of the coal as the sum of the mine operating costs plus a management fee. Section 2.10 describes the mine operating costs that are recoverable from Big Rivers as follows:

> **"§ 2.10 Mine Operating Costs. All costs and expenses incurred by GOLDSBERRY in the operating of the Mine, shall include the type of expected costs set out in Exhibit D and shall include but not necessarily be limited to the following:**
>
> **(a) All labor expenses for Mine Employees including but not limited to wages, salaries, payroll taxes, vacations, holidays, and fringe benefits.**
>
> **(b) All materials, supplies, electric power, explosives, repair parts and miscellaneous operating expenses such as medical examinations, postage, reasonable travel expenses estimated not to exceed $10,000 annually based upon 1972 costs, etc.**
>
> **(c) The actual cost to GOLDSBERRY of royalties, overriding royalties, haulage and related payments to third parties for coal mined and delivered hereunder from coal lands leased by GOLDSBERRY from third parties, and a royalty of fifteen**

(15) cents per ton on coal mined and delivered hereunder from coal lands owned by GOLDSBERRY. It is understood and agreed that BIG RIVERS shall have the right to approve any additional leasehold or coal rights acquisition by GOLDSBERRY as to the No. 9 seam within the dedicated area as shown on Exhibit B.

(d) An agreed depreciation allowance as set out upon Exhibit E.

(e) Insurance premiums paid on insurance policies as described in § 2.15 hereof.

(f) Any taxes payable by GOLDSBERRY as provided in § 2.08 hereof.

(g) Civil penalties assessed pursuant to the Coal Mine Health and Safety Act of 1969 or any subsequently enacted laws superseding or supplementing said Act whether federal, state, local, or other insofar as said civil penalties do not exceed those normally assessed at other underground mines in western Kentucky of comparable size, and one-half of all civil penalties that do not exceed those normally assessed at other underground mines in western Kentucky of comparable size. Provided, however, any civil penalty caused by the inexcusably culpable or negligent disregard of such laws by GOLDSBERRY shall be paid by GOLDSBERRY. If such shared civil penalties exceed $200,000 in any contract year, then a gross inequity will be deemed to exist under § 3.05.

(h) One half of any valid claims relating to subsidence and water pollution not to exceed a sum equal to one cent (1 cent) per ton of coal mined. BIG RIVERS shall not be responsible for any subsidence as to land that was mined prior to the effective date of the agreement, and shall have no obligation for any subsidence claims that are first asserted more than one year after this Agreement has terminated.

Costs proportioned to tons of coal mined shall be based upon quantities established under the provisions of § 2.03."

The mine operating costs are further defined through an example provided as Exhibit D to Contract No. 246. Exhibit D is replicated as my Exhibit ___ (LK-4).

Q. Please describe the provisions of Contract No. 246 that provide for recovery of the management fee.

A. Section 2.09(a) provides for a management fee as follows:

> **"The management fee will be based upon the average tons per unit shift for the current month's productivity and will be paid when coal is placed in the trucks from the stockpile on a last in, first out basis. Each month's productivity will be estimated using the total number of shuttle cars of coal loaded and an estimated ton per shuttle car. The management fee will be finally adjusted by using the truck scale weights for intervals between which the stockpile is completely depleted."**

The management fee is further defined in Exhibit F to Contract No. 246 where the fee per ton is detailed on a fixed and variable basis and in total at varying levels of production in tons per unit shift. Exhibit F is replicated as my Exhibit __ (LK-5).

Q. What is the basis for the recording of costs under the terms of Contract No. 246?

A. Section 2.16 requires that the mine record its costs in accordance with generally accepted accounting principles ("GAAP") as follows:

> **"GOLDSBERRY shall maintain books and records of all matters relating to its operation hereinunder in accordance with generally accepted accounting principles in order that all provisions of this Agreement can adequately be administered."**

This requirement to record costs in accordance with GAAP is one of the key issues related to the MAPCO demand for closing, reclamation, and accelerated recovery of other costs and will be discussed subsequently in this testimony.

Q. Please describe MAPCO's demand for closing, reclamation, and accelerated recovery of other costs.

A. In a letter dated September 8, 1992 (replicated as my Exhibit ___ (LK-6), MAPCO informed Big Rivers of its intent to not only shut down the Retiki Mine immediately upon termination of the Big Rivers' contract in January 1996, but to also accrue and charge Big Rivers over the remaining term of the contract for:

- **Incremental "employee benefit costs relating to workers' compensation claims (i.e., traumatic injury and black lung), long-term disability and medical claims. The estimated net present value of these costs is $4.3 million dollars equating to a $1.23 cost per ton, when pro rated over the 3.5 million tons anticipated to be produced and delivered during the contract years 1993 - 1995."**

- **Incremental depreciation expense to recover the $1.6 million in equipment capital costs that would otherwise be unrecovered from Big Rivers at the contract termination date. The depreciation had been over the "useful life" of the equipment in accordance with the Contract. According to the letter, MAPCO ". . . proposes to change the depreciation to straightline over the useful life of the assets or contract, whichever period is shorter." The amount sought for accelerated recovery over the remaining term of the contract is $1.6 million or $0.46 per ton.**

- **Incremental pension expense to offset the potential loss of a MAPCO Pension Plan credit. MAPCO stated in its letter that "Although the net pension expense (credit) for the remainder of the contract cannot be determined at this time, it is probable that there will be a net cost rather than the net credit that has been allocated to Retiki since 1986." The amount sought for recovery over the remaining term of the contract is $1.425 million or $0.41 per ton.**

- **Post mine closure and reclamation. MAPCO stated in its letter that "Certain expenses will be incurred in reclaiming underground equipment and the surface site. The majority of these expenses will be incurred after production ceases." The amount sought for recovery over the remaining term of the contract is $0.300 million or $0.09 per ton."**

Q. Why should MAPCO's demand be rejected?

A. First, there is no obligation under the contract for Big Rivers to pay closing and reclamation costs. Such costs are the obligation of MAPCO as the owner of the mine. As described earlier, the contract provides for recovery of mine operating costs, not closing and reclamation costs, not other costs that MAPCO will actually incur subsequent to the shutdown of the mine, and not the cost of equipment that will remain otherwise undepreciated at the date of shutdown.

Second, MAPCO's demand for recovery of these costs is premised upon its unilateral determination that it would close the mine in January 1996 when the contract with Big Rivers expires. Big Rivers has stated its intent to not renew the contract, despite the availability of additional reserves, because lower cost coal is available from other sources. If MAPCO cannot market the reserves to another party, that is a risk of its ownership, not a risk of Big Rivers, and certainly not a risk of Big Rivers' ratepayers.

Third, GAAP requires that these costs be recognized by MAPCO and written off as abandonment or shutdown costs. The recording of these costs over the remaining life of the contract is not valid GAAP unless Big Rivers accedes to MAPCO's demand and pays the additional costs. Since Contract No. 246 requires adherence to GAAP, and MAPCO, not Big Rivers, has the obligation to pay for these costs, then MAPCO cannot properly charge those amounts to operating costs over the remaining life of the contract.

Q. What GAAP prescribes the accounting treatment for closing, reclamation, and acceleration of other costs?

A. Accounting Principles Board Opinion ("APBO") No. 30, Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions, prescribes the accounting treatment for the shutdown or abandonment of a segment of a business that is identifiable as a separate physical and accounting entity. Such is clearly the case with the Retiki Mine.

APBO No. 30 requires that if a loss is expected from the abandonment or shutdown of a segment of a business, it is required to be recognized when the "management having the authority to approve the action commits itself to dispose of a segment of the business, whether by sale or abandonment." MAPCO has committed itself to the shutdown of the Retiki Mine in January 1996, according to its September 8, 1992 letter to Big Rivers. Thus, MAPCO is required under GAAP to recognize these costs as a loss unless Big Rivers accedes to payment.

Q. Has Big Rivers paid any of these additional costs?

A. Yes. Big Rivers paid at least the accelerated depreciation expense and possibly the other additional costs. In its "Agreed-Upon Procedures Report" related to Contract No. 246 and dated September 30, 1992, KPMG Peat Marwick noted the following:

> **"Depreciation expense for 1991 increased approximately $109,000 over 1990. The majority of this increase results from an adjustment to deprecation of property considered to be "mine-life". Mine-life property is that property which is to be depreciated over the life of the mine. In 1991, MAPCO adjusted the life of the mine to end on January 15, 1996, the date the contract with Big Rivers expires. This adjustment caused an increase to depreciation expense for 1991 of $318,720. MAPCO states the reason for this adjustment is that the equipment at Retiki will have little or no value as the conventional mining method employed at the mine is outdated and a buyer for the equipment is unlikely. If this approach is used until the end of the contract, it will result in additional billings to Big Rivers over the remaining life of the contract of approximately $387,000 per year.**
>
> **This increase was offset by a decrease of $200,000 due to fewer tons being mined from the P&M reserves, thus reducing the amortization of these reserves."**

In other words, even before its September 8, 1992 letter to Big Rivers, MAPCO had unilaterally changed the definition of "useful life" to "mine-life" to increase the depreciation expense. Thus, MAPCO has improperly charged Big Rivers an excessive $0.387 million per year.

In addition, Big Rivers may also have paid MAPCO for the other incremental costs it sought in its September 8, 1992 letter.

Q. Should these amounts be returned to Big Rivers' ratepayers?

A. Yes. A total of $0.835 million ($0.952 million including interest through April 30, 1993) in overcharges should be returned for the accelerated depreciation improperly paid by Big Rivers and recovered from ratepayers in 1991 ($0.319 million), 1992 ($0.387 million), and from January 1, 1993 through April 30, 1993 ($0.129 million computed as $0.387 million annually times four twelfths). The $0.387 annual amount included in the current fuel clause recovery should also be disallowed and refunded to Big Rivers' ratepayers. Future recovery should be denied.

If amounts for the other costs, in addition to the accelerated depreciation, have been paid by Big Rivers and collected from ratepayers, they should also be disallowed and refunded. Future recovery should also be denied.

Q. Are the costs billed to Big Rivers under Contract No. 246 subjected to an annual review by an outside auditing firm?

A. Yes. The most recent annual review available in this proceeding was performed by KPMG Peat Marwick, a Big Six accounting firm. The review was dated September 30, 1992 and covered the calendar year 1991. The report on the review is replicated as my Exhibit ____(LK-7).

Q. Please describe the review performed by KPMG Peat Marwick.

A. The review performed by KPMG Peat Marwick was not a financial or operational audit but only an "Agreed-Upon Procedures" review. In its review, KPMG Peat Marwick verified recorded transactions to source documents and tested the mathematical accuracy of various computations. It identified the reasons for increases in 1991 costs compared to 1990 costs. However, in its report, KPMG Peat Marwick offered no opinion on whether the increased costs were appropriate or allowed under the terms of the contract. Thus, the fact that KPMG Peat Marwick performed an "Agreed-Upon Procedures" review does not address the propriety of the increased depreciation charges and therefore can provide no assurance to the Commission or Big Rivers' ratepayers that there have been no overcharges.

Q. Were there specific findings reported by KPMG Peat Marwick in the "Agreed-Upon Procedures" report that the Commission should be aware of?

A. Yes. First, KPMG identified the additional accelerated depreciation charge that I previously discussed. Second, KPMG Peat Marwick found that MAPCO had been depreciating land. Depreciation on land in 1991 was $0.040 million. An additional $0.125 million was identified for future depreciation "over the next four years," presumably the remainder of the contract term.

Q. Is land properly depreciable?

A. No. Land is not depreciable. Thus, there was an additional amount of overcharge under the contract of $0.081 million ($0.093 million including interest through April 30, 1993) during the January 1, 1991 through April 30, 1993 period that should be disallowed and returned to Big Rivers' ratepayers. Prospectively, $0.031 million annually should be disallowed.

VI. BOOK TO PHYSICAL INVENTORY WRITEDOWNS AT GREEN PLANT

Q. Please summarize your recommendation on the book to physical inventory writedowns at the Green Plant.

A. The effect on fuel costs of the book to physical writedowns at the Green Plant during 1991 and 1992 should be disallowed and the overcharges returned to the ratepayers. A significant percentage of the coal Big Rivers had recorded on its books as purchases and included in inventory simply did not physically exist. The effect is approximately $1.677 million ($1.943 million including interest through April 30, 1993) based upon estimates included in the Overland Audit Report[18] as modified by the testimony of KIUC and AG witness Mr. Klepper.

Q. Please describe the book and physical inventory processes related to the Retiki Mine coal utilized at the Green Plant.

A. The coal is mined by MAPCO at the Retiki Mine and stockpiled at the mine. The coal is both weighed and sampled at the mine site. It is then transported from the stockpile by Rose Brothers Trucking, a company owned by Mr. Eddie Brown, to the Green Plant site where it is dumped into an underground hopper.

Big Rivers is then billed by MAPCO in accordance with the terms of Contract No. 246 which I have already discussed. Big Rivers does not independently weigh the

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[18] Ibid, page 12 - 8, Endnote 21.

coal at the Green Plant site, instead relying upon MAPCO's representations and invoices.

Annually, Big Rivers performs a physical inventory of the coal stockpile at the Retiki Mine. In the twelve month period ending August 31, 1992, the physical inventory was approximately 9.3% less than the level recognized on Big Rivers' books (before any interim inventory adjustments), suggesting that it either did not receive or had somehow "lost" a significant amount of coal.

Consequently, Big Rivers had to reduce the number of tons recorded on its books to match the physical inventory. Although the number of tons was written down, there was no writedown of the dollar value of the inventory on the accounting books. Thus, the physical inventory loss was reflected through a higher cost per ton which then in turn was charged to ratepayers through the fuel clause as the fuel stockpile was actually burned and replaced. Since the fuel inventory turnover is in excess of five times per year, the effect of the inventory adjustment on fuel expense would have been charged to ratepayers during the normal two year fuel review period.

Q. **How does this compare to the inventory adjustment recorded by Big Rivers for its other plants during the twelve month period ending August 31, 1992?**

A. It is clearly excessive. The average of the book to physical inventory adjustments recorded by Big Rivers for all of its plants including Green was a write<u>down</u> of 2.0%. Excluding Green, there was an average write<u>up</u> of approximately 2.0%.

Q. What explanation is there for such a large discrepancy at Green?

A. There are at least three possibilities, although according to the Overland Report, Big Rivers has made no attempt to determine the underlying reasons for the book to physical inventory adjustments. These possibilities exist due to the severe control deficiencies in the Green coal purchasing process described in the Overland Audit Report and also subsequently addressed in my testimony.

First, the possibility exists that some of the coal actually mined, invoiced, and loaded onto trucks by MAPCO never reached the Green Plant. Some of the coal may have been directed to other customers of Rose Brothers Trucking and/or Mr. Eddie Brown. The truck scales at Green are not utilized to weigh the trucks delivering coal from the Retiki Mine. Second, the possibility exists that, although the accuracy of the coal scales at the Retiki Mine is independently tested, MAPCO may have billed Big Rivers for more coal than it actually mined and loaded onto the trucks of Rose Brothers Trucking. That may have enabled MAPCO to reap higher management fees due to higher "productivity" levels. Third, there may by other less evident flaws in the process, such as the estimated weight methodology employed by MAPCO.

The Commission may never know the actual reason for such a large inventory writedown at the Green Plant, but the ratepayers should not be obligated to pay for the excessive fuel costs that resulted. The Commission should disallow and refund to ratepayers the $1.677 million ($1.943 million including interest through April 30, 1993) excessive book to physical inventory loss.

VI. PROBLEMS WITH CONTROL PROCESS AND RECOMMENDATIONS FOR IMPROVEMENT

Q. Please summarize your recommendations to improve the control process of Big Rivers.

A. I recommend that several steps be taken to improve the control process at Big Rivers to assure that the problems and excessive coal costs are not perpetuated or revisited upon the Big Rivers' ratepayers in the future.

First, the Board of Directors should take a more active role in the management of Big Rivers. It should also retain independent counsel, energize the Audit Committee, and reactivate the Coal Committee.

Second, the Company should introduce more dispersion of responsibilities (separation of duties), actively and aggressively review all existing coal contracts for price reductions or mitigation of increases and, if necessary, obtain independent oversight of the entire fuel procurement process.

Third, the Internal Audit function should be expanded and focused on coal procurement and fraud detection. Its independence should be enhanced to assure that its functions are not redirected by management or otherwise compromised.

Fourth, the external audit function should be directed to expand its review of coal contracts and costs and its search for fraud. The external audit function should also be reviewed for conflicts of interest with respect to Big Rivers and its suppliers.

Fifth, coal for the Green Plant should be weighed and sampled at the Green Plant site by Big Rivers rather than at the Retiki Mine by MAPCO.

Sixth, cash advances and/or loans to suppliers should be strictly prohibited by the Board of Directors.

Seventh, the Customer Working Group, proposed previously by Mr. Klepper on behalf of KIUC and AG, should be actively involved in straightening out the coal procurement fiasco and the review of contracts and coal supplies.

Finally, the Commission should aggressively utilize its regulatory oversight capability to ensure that Big Rivers implements these recommendations and to protect Big Rivers' ratepayers from excessive costs in the future.

Q. What is the significance of the control process?

A. The control process is the system of internal and external controls that ensure that ratepayers are protected from improper and excessive costs. There are several components to the control process including the Company's Board of Directors, its management and processes, the internal audit and external audit functions, and other external controls including the ratepayers and the Commission.

Q. What problems have you or others identified with the Big Rivers' Board of Directors?

A. First and fundamentally, the Board has been too passive in the past, relying too heavily upon the General Manager and his representations and threats, coupled with too little direct involvement in the oversight and management process. The Board needs to aggressively oversee Big Rivers and its management. It has no choice but to become more actively involved. Among the comments from the Overland interviews with Board members are the following:

> **"11. Johnson indicated the Big Rivers board was more passive than what he was used to . . . most of the board acted as if 'Thorpe could walk on water' . . . "[19]**
>
> **"80. On long-term contracts, Johnson doesn't think the board ever had a good handle on how they were awarded."[20]**

Second, given the nature of the problems at Big Rivers, it appears to be obvious that the Board needs to assure its independence from management and the Big Rivers' corporate advisers. The Board should obtain independent legal counsel to advise it.

Third, the Audit Committee hasn't actively exercised its audit responsibilities. It needs to energize the Internal Audit function, insisting that the internal auditors report directly to the Audit Committee, have complete independence from

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[19] Overland File 4 Interview Summaries, page 396.

[20] Ibid, page 401.

management, and that the function is used for operational as well as financial auditing purposes under the direction of the Audit Committee and the full Board. Further, the Audit Committee needs to insist upon independence in its external auditors from conflicts of interest both in actuality and in appearance and to insist upon more aggressive involvement in advising management and the Board in the areas of internal controls, fraud, and cost reduction opportunities.

Fourth, according to the interviews conducted by Overland, the Coal Committee has been allowed to become dormant, to the obvious detriment of Big Rivers and its ratepayers. The Coal Committee needs to be reestablished and to aggressively oversee the coal procurement process. The Coal Committee has the opportunity to reintroduce some sanity and direction into the coal procurement process that has been sorely lacking.

Q. What problems have you or others identified in the management process at Big Rivers?

A. First, there is a lack of adherence to the internal controls purportedly in effect at Big Rivers. This conclusion is based upon the Overland Audit Report and the interviews conducted by Overland. For example, the competitive bid process was repeatedly circumvented, envelopes filled with cash found in the General Manager's office were not reported to the Audit Committee of the Board, excessive sick time by the General Manager was not investigated for underlying personal problems, and other checks and balances were overridden. Both the management and the Board of Directors should aggressively review the internal controls at Big

Rivers including the organization structure and reporting relationships, the purchasing process including competitive bidding, and the internal auditing process, among others.

Second, many of the coal contracts reflect excessive costs. Management and the Board need to initiate an aggressive review of those contracts for cost reduction opportunities, to pursue litigation even if it is less than certain that Big Rivers will prevail, and to instill a new attitude into the Fuel Procurement department of aggressive resistance to supplier price increases and detrimental contract revisions. The focus should be on minimizing the price and not on supplier "accommodation."

Third, the management process has failed in large part due to the passivity of the Board and the failure of other external oversight. Big Rivers' management should submit to the independent oversight of the Board and other external agencies including the Commission and abide by the internal controls and policies that are in place at Big Rivers. If it cannot rectify the situation that now exists, an independent trustee should be retained to operate the Company and institute necessary changes to the management process.

Q. What problems have you or others identified in the Internal Audit process at Big Rivers?

A. First, historically there has been only a limited Internal Audit process at Big Rivers. This conclusion is based upon the Overland Audit Report and the interviews conducted by Overland. The single internal auditor was usually assigned to "special projects," rather than performing operational audits, internal control audits, coal contract audits, or financial audits. Second, the single internal auditor did not report to the Audit Committee of the Board, and thus lacked appropriate direction and independence from management.

The Internal Audit function needs to be expanded to perform meaningful audit work and needs to be relieved of responsibility for "special projects." Further, the Internal Audit function should report directly to the Audit Committee on a periodic and frequent basis and be provided broad inquiry and audit responsibilities along with the necessary independence to properly perform those responsibilities. The Audit Committee should be informed immediately if ever again the internal auditor or other employees of Big Rivers discover envelopes of $100 bills in the offices of management.

Q. What problems have you or others identified in the external auditing process at Big Rivers?

A. There appear to be three primary problems. First, there appears to be a lack of involvement on behalf of the Company and the Board in identifying and rectifying problems with the internal control process at Big Rivers. Obvious internal control problems have included the circumvention of the controls in the coal purchasing process (competitive bidding, separation of duties, etc.), by the former General Manager. Comments from the Overland interviews included the following:

> **"33. Before 1982, it seemed like upper management left decisions up to the fuel department. Then in 1982 and 1983 or some time around there, upper management started telling them what to do."[21]**

In addition, based upon the Overland Audit Report and the interviews conducted by Overland, the external auditors did not identify any major internal control problems at Big Rivers. The Overland interviews included the following comments:

> **"14. Anytime the audit committee met with Peat, Johnson told Sumner to make fuel procurement a top priority in the audit. Johnson wanted Peat to look at how coal was bid. Peat never came back with anything of substance.**
>
> **15. The board has tightened up the policy on competitive bidding. Johnson was not surprised at how little competitive bidding was done. He understood that Thorpe pretty much ruled on fuel procurement."[22]**
>
> **"15. Sumner can't think of any concerns about Big Rivers' internal controls over fuel procurement. Peat has not issued any management recommendations related to fuel procurement.**
>
> **16. When asked if there were any changes he would like to see in the way Big Rivers buys fuel, Sumner responded that he hasn't studied Big Rivers' fuel procurement from an efficiency standpoint. From an internal controls standpoint he doesn't have any recommendations."[23]**

Second, the external auditing firm should avoid even the appearance of a conflict of interest among its clients. Comments from the Overland interviews indicate that

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[21] Interview of Titzer, former Big Rivers Fuel Coordinator, Overland File 4 Interview Summaries, page 421.

[22] Interview of Johnson, Board Member, Overland File 4 Interview Summaries, page 346.

[23] Interview of Sumner, KPMG Peat Marwick partner on Big Rivers' audits, Overland File 4 Interview Summaries, pages 365 - 366.

there was some concern that the external audit firm represented both Big Rivers and certain of its suppliers.

> **"50. . . . He began by indicating that Peat Marwick was both J. Smith's and BREC's auditors . . ."** [24]
>
> **"37. Sumner was asked if he felt Peat's work for Smith created a conflict in advising BREC about the consulting agreement. He responded that he didn't advise BREC about the consulting agreement. He was never asked for any opinions. His role was entirely one of making the board aware of the facts."**[25]
>
> **"30. Johnson is uncomfortable with Sumner advising Big Rivers since he also has done work for Smith and Green River."**[26]
>
> **"74. Sumner seemed to be at the board meetings on the substitution to testify for Green River. Johnson asked Sumner where his independence was and Sumner got embarrassed . . ."**[27]

The Audit Committee should establish strong conflict of interest guidelines for the external auditing firm.

Third, the external auditor has a responsibility to not only review and assess the internal control process but to actively search for material fraud. The indictment and guilty plea of Mr. Eddie Brown and the Overland Audit Report describe illegal, improper, and questionable payments made directly or indirectly to influence the

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[24] Interview of Schmitz, current General Manager of Big Rivers, Overland Interview Summaries, page 315.

[25] Interview of Sumner, KPMG Peat Marwick partner on Big Rivers' audits, File 4 Overland Interview Summaries, page 368.

[26] Interview of Johnson, Board Member, File 4 Overland Interview Summaries, page 397.

[27] Ibid, File 4 Overland Interview Summaries, page 401.

coal purchasing process at Big Rivers, the suppliers of coal and the costs associated with the coal. The Overland interview notes state that:

> **"9. Peat does not 'do a lot on the fraud.' They do send a questionnaire to management asking management to disclose any illegal acts they are aware of. The primary tool for detecting collusion is a review of the contracts and dollars paid for reasonableness."[28]**

The Audit Committee should require the external auditing firm to broaden its areas of inquiry and reporting to the Committee, to search more aggressively for material fraud and collusion, and to assist management and the Board in implementing effective and meaningful internal control processes.

Q. What specific internal control problems have you identified with respect to the coal utilized at the Green Plant?

A. The coal is weighed and sampled at the Retiki Mine then trucked to the Green Plant. There is a complete lack of control over this process as evidenced by the excessive book to physical inventory writedown I previously discussed. The coal from the Retiki Mine, or any other mine for that matter, needs to be weighed and sampled by Big Rivers at the Green Plant site.

Q. Are there any other specific internal control problems that should be separately addressed?

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[28] Interview of Sumner, KPMG Peat Marwick partner for Big Rivers' audits, File 4 Overland Interview Summaries, page 365.

A. Yes. The Board of Directors and management should establish a rigid and continuing policy to never advance cash or provide loans to its suppliers. If the supplier cannot stand on its own financially, Big Rivers should find another supplier. Never again should Big Rivers be allowed, to the detriment of its ratepayers and its creditors, to ever advance funds to a supplier such as Green River Coal Company only to become an unsecured creditor of a bankrupt firm.

Q. What role should the Customer Working Group, originally proposed by Mr. Klepper on behalf of KIUC and AG, assume?

A. The Customer Working Group should work aggressively with Big Rivers to obtain the lowest coal costs practicable. That would include reformulating the procurement strategy, identifying suppliers, aggressively pursuing price reductions on existing contracts, and properly structuring future contracts.

Q. What role should the Commission assume with respect to Big Rivers?

A. The Commission should assume an active oversight role to assure that Big Rivers is properly managed, that costs to ratepayers are minimized, that the whole coal purchasing process is revamped and refocused to minimize costs and to minimize the opportunity for illegal activities, and to protect the ratepayers from past, present, and future overcharges by Big Rivers.

Q. Does this complete your testimony?

A. Yes.

Lane Kollen

Lane Kollen

State of Georgia
County of Fulton

Subscribed and sworn to before me, a notary public in and for the State and County aforesaid.

My commission expires:

Notary Public, Fulton County, Georgia.
My Commission Expires June 6, 1997.

Date: October 7, 1993

Sandra Borg

COMMONWEALTH OF KENTUCKY

BEFORE THE

KENTUCKY PUBLIC SERVICE COMMISSION

BIG RIVERS ELECTRIC CORPORATION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE	)	
COMMISSION OF THE APPLICATION OF	)	CASE NO. 92-490
THE FUEL ADJUSTMENT CLAUSE OF	)	CASE NO. 92-490-A
BIG RIVERS ELECTRIC CORPORATION	)	CASE NO. 90-360-C
FROM NOVEMBER 1, 1991 TO APRIL 30, 1992	)	

EXHIBITS

OF

LANE KOLLEN

REVISED PURSUANT TO

COMMISSION ORDER

DATED OCTOBER 1, 1993

ON BEHALF OF

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS

AND

KENTUCKY ATTORNEY GENERAL

KENNEDY AND ASSOCIATES
ATLANTA, GEORGIA

OCTOBER 1993

RESUME OF LANE KOLLEN, VICE PRESIDENT

EDUCATION

University of Toledo, BBA
Accounting

University of Toledo, MBA

PROFESSIONAL CERTIFICATIONS

Certified Public Accountant (CPA)

Certified Management Accountant (CMA)

PROFESSIONAL AFFILIATIONS

American Institute of Certified Public Accountants

Georgia Society of Certified Public Accountants

Institute of Certified Management Accountants

Institute of Management Accountants

Seventeen years utility industry experience in the financial, rate, and planning areas. Specialization in revenue requirements analyses, taxes, evaluation of rate and financial impacts of traditional and nontraditional ratemaking, utility mergers/acquisition diversification. Expertise in proprietary and nonproprietary software systems used by utilities for budgeting, rate case support and strategic and financial planning.

RESUME OF LANE KOLLEN, VICE PRESIDENT

EXPERIENCE

1986 to Present: Kennedy and Associates: Vice President and Principal. Responsible for utility revenue requirements analysis, cash flow projections and solvency, financial and cash effects of traditional and nontraditional ratemaking, and research, speaking and writing on the effects of tax law changes. Testimony before Connecticut, Florida, Georgia, Indiana, Louisiana, Kentucky, Minnesota, North Carolina, Ohio, Pennsylvania, Texas, and West Virginia Public Service Commissions and the Federal Energy Regulatory Commission.

1983 to 1986: Energy Management Associates: Lead Consultant.
Consulting in the areas of strategic and financial planning, traditional and nontraditional ratemaking, rate case support and testimony, diversification and generation expansion planning. Directed consulting and software development projects utilizing PROSCREEN II and ACUMEN proprietary software products. Utilized ACUMEN detailed corporate simulation system, PROSCREEN II strategic planning system and other custom developed software to support utility rate case filings including test year revenue requirements, rate base, operating income and pro-forma adjustments. Also utilized these software products for revenue simulation, budget preparation and cost-of-service analyses.

1976 to 1983: The Toledo Edison Company: Planning Supervisor.
Responsible for financial planning activities including generation expansion planning, capital and expense budgeting, evaluation of tax law changes, rate case strategy and support and computerized financial modeling using proprietary and nonproprietary software products. Directed the modeling and evaluation of planning alternatives including:

- Rate phase-ins.
- Construction project cancellations and write-offs.
- Construction project delays.
- Capacity swaps.
- Financing alternatives.
- Competitive pricing for off-system sales.
- Sale/leasebacks.

RESUME OF LANE KOLLEN, VICE PRESIDENT

CLIENTS SERVED

Industrial Companies and Groups

Air Products and Chemicals, Inc.
Airco Industrial Gases
Alcan Aluminum
Armco Advanced Materials Co.
Armco Steel
Bethlehem Steel
Connecticut Industrial Energy Consumers
ELCON
Enron Gas Pipeline Company
Florida Industrial Power Users Group
General Electric Company
GPU Industrial Intervenors
Indiana Industrial Group
Industrial Consumers for
Fair Utility Rates - Indiana
Industrial Energy Consumers - Ohio
Kentucky Industrial Utility Consumers
Leheigh Valley Power Committee
Maryland Industrial Group
Multiple Intervenors (New York)
National Southwire
North Carolina Industrial
Energy Consumers
Occidental Chemical Corporation
Ohio Industrial Energy Consumers
Ohio Manufacturers Association
Philadelphia Area Industrial Energy
Users Group
PSI Industrial Group
Smith Cogeneration
Taconite Intervenors (Minnesota)
West Penn Power Industrial Intervenors
West Virginia Energy Users Group
Westvaco Corporation

Regulatory Commissions and Government Agencies

Georgia Public Service Commission Staff
Kentucky Attorney General's Office, Division of Consumer Protection
Louisiana Public Service Commission Staff
New York State Energy Office
Office of Public Utility Counsel (Texas)

RESUME OF LANE KOLLEN, VICE PRESIDENT

Utilities

Allegheny Power System
Atlantic City Electric Company
Carolina Power & Light Company
Cleveland Electric Illuminating Company
Delmarva Power & Light Company
Duquesne Light Company
General Public Utilities
Georgia Power Company
Middle South Services
Nevada Power Company
Niagara Mohawk Power Corporation
Otter Tail Power Company
Pacific Gas & Electric Company
Public Service Electric & Gas
Public Service of Oklahoma
Rochester Gas and Electric
Savannah Electric & Power Company
Seminole Electric Cooperative
Southern California Edison
Talquin Electric Cooperative
Tampa Electric
Texas Utilities
Toledo Edison Company

Expert Testimony Appearances
of
Lane Kollen
As of April 1993

Date	Case	Jurisdict.	Party	Utility	Subject
10/86	U-17282 Interim	LA	LPSC Staff	Gulf States Utilities	Cash Revenue Requirements Financial Solvency.
11/86	U-17282 Interim Rebuttal	LA	LPSC Staff	Gulf States Utilities	Cash Revenue Requirements Financial Solvency.
12/86	9613	KY	Attorney General Div. of Consumer Protection	Big Rivers Electric Corp	Revenue Requirements Accounting Adjustments Financial Workout Plan.
1/87	U-17282 Interim	LA 19th Judicial District Ct.	LPSC Staff	Gulf States Utilities	Cash Revenue Requirements Financial Solvency.
3/87	General Order 236	WV	W. Va. Energy Users Group	Monongahela Power	Tax Reform Act of 1986.
4/87	U-17282 Prudence	LA	LPSC Staff	Gulf States Utilities	Prudence of River Bend 1 Economic Analyses, Cancellation Studies.
4/87	M-100 Sub 113	NC	North Carolina Industrial Energy Consumers	Duke Power	Tax Reform Act of 1986.
5/87	86-524-E-	WV	West Virginia Energy Users' Group	Monongahela Power	Revenue Requirements. Tax Reform Act of 1986.
5/87	U-17282 Case In Chief	LA	LPSC Staff	Gulf States Utilities Financial Solvency.	Revenue Requirements, River Bend 1 Phase-in Plan,
7/87	U-17282 Case In Chief Surrebut	LA	LPSC Staff	Gulf States Utilities Financial Solvency.	Revenue Requirements River Bend 1 Phase-in Plan,
7/87	U-17282 Prudence Surrebut	LA	LPSC Staff	Gulf States Utilities	Prudence of River Bend 1, Economic Analyses, Cancellation Studies.
7/87	86-524 E-SC Rebuttal	WV	West Virginia Energy Users' Group	Monongahela Power	Revenue Requirements, Tax Reform Act of 1986.
8/87	9885	KY	Attorney General Div. of Consumer Protection	Big Rivers Electric Corporation	Financial Workout Plan.
8/87	E-015/GR-87-223	MN	Taconite Intervenors	Minnesota Power & Light	Revenue Requirements, O&M Expense, Tax Reform Act of 1986.

Expert Testimony Appearances
of
Lane Kollen
As of April 1993

Date	Case	Jurisdict.	Party	Utility	Subject
10/87	870220-EI	FL	Occidental Chemical Corp.	Florida Power Corp.	Revenue Requirements, O&M Expense, Tax Reform Act of 1986.
11/87	87-07-01	CT	Conn. Industrial Energy Consumers	Conn. Light and Power	Tax Reform Act of 1986.
1/88	U-17282	LA 19th Judicial District Ct.	LPSC Staff	Gulf States Utilities	Revenue Requirements, River Bend 1 Phase-in Plan, Rate of Return.
2/88	9934	KY	Kentucky Industrial Utility Customers	Louisville Gas & Elec.	Economics of Trimble County Completion.
2/88	10064	KY	Kentucky Industrial Utility Customers	Louisville Gas & Elec.	Revenue Requirements, O&M Expense, Capital Structure, Excess Deferred Income Taxes.
5/88	10217	KY	Alcan Aluminum National Southwire	Big Rivers	Financial Workout Plan.
5/88	M-87017 -1C001	PA	GPU Industrial Intervenors	Metropolitan Edison	Nonutility Generator Deferred Cost Recovery.
5/88	M-87017 -2C005	PA	GPU Industrial Intervenors	Pennsylvania Electric	Nonutility Generator Deferred Cost Recovery.
6/88	U-17282	LA 19th Judicial District Ct.	LPSC Staff	Gulf States Utilities	Prudence of River Bend 1 Economic Analyses, Cancellation Studies, Financial Modeling.
7/88	M-87017- -1C001 Rebuttal	PA	GPU Industrial Intervenors	Metropolitan Edison	Nonutility Generator Deferred Cost Recovery, SFAS No. 92
7/88	M-87017- -2C005 Rebuttal	PA	GPU Industrial Intervenors	Pennsylvania Electric	Nonutility Generator Deferred Cost Recovery, SFAS No. 92
9/88	88-05-25	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power	Excess Deferred Taxes, O&M Expenses.
9/88	10064 Rehearing	KY	Kentucky Industrial Utility Customers	Louisville Gas & Elec.	Premature Retirements, Interest Expense.
10/88	88-170- EL-AIR	OH	Ohio Industrial Energy Consumers	Cleveland Electric	Revenue Requirements, Phase-In, Excess Deferred Taxes, O&M Expenses, Financial Considerations, Working Capital.

Expert Testimony Appearances
of
Lane Kollen
As of April 1993

Date	Case	Jurisdict.	Party	Utility	Subject
10/88	88-171-EL-AIR	OH	Ohio Industrial Energy Consumers	Toledo Edison	Revenue Requirements, Phase-In, Excess Deferred Taxes, O&M Expenses, Financial Considerations, Working Capital.
10/88	8800 355-EI	FL	Florida Industrial Power Users Group	Florida Power & Light	Tax Reform Act of 1986, Tax Expenses, O&M Expenses, Pension Expense (SFAS No. 87).
10/88	3780-U	GA	Georgia Staff	Atlanta Gas Light	Pension Expense (SFAS No. 87).
11/88	U-17282 Remand	LA	LPSC Staff	Gulf States Utilities	Rate Base Exclusion Plan (SFAS No. 71)
12/88	U-17970	LA	LPSC Staff	AT&T Comm. of South Central States	Pension Expense (SFAS No. 87).
12/88	U-17949 Rebuttal	LA	LPSC Staff	South Central Bell	Compensated Absences (SFAS No. 43), Pension Expense (SFAS No. 87), Part 32, Income Tax Normalization.
2/89	U-17282 Phase II	LA	LPSC Staff	Gulf States Utilities	Revenue Requirements, Phase-in of River Bend 1, Recovery of Cancelled Plant.
6/89	881602-EU 890326-EU	FL	Talquin Electric Cooperative	Talquin/City of Tallahassee	Economic Analyses, Incremental Cost of Service, Average Customer Rates.
7/89	U-17970	LA	LPSC Staff	AT&T Comm. of South Central States	Pension Expense (SFAS No. 87), Compensated Absences (SFAS No. 43), Part 32.
8/89	8555	TX	Occidental Chemical Corp.	Houston Lighting & Power Company	Cancellation Cost Recovery, Tax Expense, Revenue Requirements.
8/89	3840-U	GA	GPSC Staff	Georgia Power Company	Promotional Practices, Advertising, Economic Development.
9/89	U-17282 Phase II Detailed	LA	LPSC Staff	Gulf States Utilities	Revenue Requirements Detailed Investigation.
10/89	8880	TX	Enron Gas Pipeline	Texas-New Mexico Power	Deferred Accounting Treatment, Sale/Leaseback.
10/89	8928	TX	Enron Gas Pipeline	Texas-New Mexico Power	Revenue Requirements, Imputed Capital Structure, Cash Working Capital.

Expert Testimony Appearances
of
Lane Kollen
As of April 1993

Date	Case	Jurisdict.	Party	Utility	Subject
10/89	R-891364	PA	Philadelphia Area Industrial Energy Users Group	Philadelphia Electric	Revenue Requirements.
11/89 12/89	R-891364 Surrebuttal (2 Filings)	PA	Philadelphia Area Industrial Energy Users Group	Philadelphia Electric	(1) Revenue Requirements, (2) Sale/Leaseback.
1/90	U-17282 Phase II Detailed Rebuttal	LA	LPSC Staff	Gulf States Utilities	Revenue Requirements Detailed Investigation.
1/90	U-17282 Phase III	LA	LPSC Staff	Gulf States Utilities	Phase-In of River Bend 1, Deregulated Asset Plan.
3/90	890319-EI	FL	Florida Industrial Power Users Group	Florida Power & Light Co.	O&M Expenses, Tax Reform Act of 1986.
4/90	890319-EI Rebuttal	FL	Florida Industrial Power Users Group	Florida Power & Light Co.	O&M Expenses, Tax Reform Act of 1986.
4/90	U-17282	LA 19th Judicial District Ct.	LPSC Staff Utilities Co.	Gulf States of Utility Assets.	Fuel Clause, Gain on Sale
9/90	90-158	KY	Kentucky Industrial Utility Customers	Louisville Gas & Electric	Revenue Requirements, Post-Test Year Additions, Forecasted Test Year.
12/90	U-17282 Phase IV	LA	LPSC Staff	Gulf States Utilities	Revenue Requirements Issues.
3/91	29327, et. al.	NY	Multiple Intervenors	Niagara Mohawk Power Corp.	Incentive Regulation.
5/91	9945	TX	Office of Public Utility Counsel of Texas	El Paso Electric Co.	Financial Modeling, Economic Analyses, Prudence of Palo Verde 3.
9/91	P-910511 P-910512	PA	Allegheny Ludlum Corp., Armco Advanced Matls. Co., The West Penn Power Industrial Users Group	West Penn Power Co.	Recovery of CAAA Costs, Least Cost Financing.
9/91	91-231 -E-NC	WV	West Virginia Energy Users Group	Monongahela Power Co.	Recovery of CAAA Costs, Least Cost Financing.
11/91	U-17282	LA	LPSC Staff	Gulf States Utilities	Asset Impairment, Deregulated Asset Plan, Revenue Requirements Issues.

**Expert Testimony Appearances
of
Lane Kollen
As of April 1993**

Date	Case	Jurisdict.	Party	Utility	Subject
12/91	91-410-EL-AIR	OH	Air Products and Chemicals, Inc., Armco Steel Co., General Electric Co., Industrial Energy Consumers	Cincinnati Gas and Electric Co.	Revenue Requirements Issues, Phase-In Plan.
12/91	10200	TX	Office of Public Utility Counsel of Texas	Texas-New Mexico Power Company	Financial Integrity, Company Strategic Planning and Declined Business Affiliations.
5/92	910890-EI	FL	Occidental Chemical	Florida Power Corp.	Revenue Requirements, O&M Expense, Pension Expense, OPEB Expense, Fossil Dismantling, Nuclear Decommissioning.
8/92	R-00922314	PA	GPU Industrial Intervenors	Metropolitan Edison Company	Incentive Regulation, Performance Rewards, Purchased Power Risk, OPEB Expense
9/92	92-043	KY	Kentucky Industrial Utility Consumers	Generic Proceeding	OPEB Expense.
9/92	920324-EI	FL	Florida Industrial Power Users Group	Tampa Electric Co.	OPEB Expense.
9/92	39348	IN	Indiana Industrial Group	Generic Proceeding	OPEB Expense.
9/92	910840-PU	FL	Florida Industrial Power Users Group	Generic Proceeding	OPEB Expense.
9/92	39314	IN	Industrial Consumers for Fair Utility Rates	Indiana Michigan Power Co.	OPEB Expense.
11/92	U-19904	LA	Louisiana Public Service Comm.	Gulf States Utilities/Entergy Corp.	Merger.
11/92	8649	MD	Westvaco Corp. Eastalco Aluminum Co.	Potomac Edison Co.	OPEB Expense.
11/92	92-1715-AU-COI	OH	Ohio Manufacturers Association	Generic Proceeding	OPEB Expense.
12/92	R-00922378	PA	Armco Advanced Materials Co., The WPP Industrial Intervenors	West Penn Power Co.	Incentive Regulation, Performance Rewards, Purchased Power Risk, OPEB Expense.
12/92	U-19949	LA	Louisiana Public Service Comm. Staff	South Central Bell	Affiliate Transactions, Cost Allocations, Merger.
12/92	R-00922479	PA	Philadelphia Area Industrial Energy Users Group	Philadelphia Electric Co.	OPEB Expense.