

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S )  
NOTICE OF CHANGES IN RATES AND )  
TARIFFS FOR WHOLESALE ELECTRIC SERVICE ) CASE NO. 9613  
AND OF A FINANCIAL WORKOUT PLAN )

O R D E R

By Order entered October 31, 1986, the Commission scheduled a prehearing conference on November 24, 1986, and directed the parties to file, by November 17, 1986, a list of issues to be discussed. The Order also stated that at the prehearing conference the Commission would distribute a list of hearing issues. Two lists of issues were timely submitted; one by Big Rivers Electric Corporation ("Big Rivers") and one by the Attorney General's Office ("AG") on behalf of itself and National-Southwire Aluminum Company ("NSA"), Alcan Aluminum Corporation ("Alcan"), Commonwealth Aluminum Corporation and Alumax Aluminum Corporation.

Big Rivers' issues list consisted of both substantive issues to be adjudicated in this docket and three motions to be discussed at the prehearing conference. The motions seek to compel NSA and Alcan to respond to requests for information and to strike portions of the prefiled testimony of H. Clyde Allen and the supplemental testimony of Howard W. Pifer, III, and Joseph S. Graves. The AG's issues list contained substantive issues for adjudication and the procedural issue of conducting the

evidentiary hearing on an issue basis, rather than a witness basis.

Based on a review of the substantive and procedural issues set forth by the parties for discussion at the prehearing conference and the responses thereto, discussed in detail below, the Commission is of the opinion and hereby finds that the pleadings fully and comprehensively address all aspects of the issues to be discussed at the prehearing conference. Therefore, oral argument will be unnecessary and the Commission's decision will be based on the pleadings of record.

BIG RIVERS' MOTION TO COMPEL NSA'S RESPONSES  
TO INFORMATION REQUESTS

Big Rivers seeks to compel responses by NSA to requests for information on the grounds that the responses are needed to assess NSA's testimony and its economic viability. The bulk of the information requested relates to either the reliability of NSA as a power purchaser or NSA's cost of producing aluminum and its cost of doing business.

On November 24, 1986, NSA filed a response in opposition to Big Rivers' motion to compel. NSA states that the issue in this case is not its economic viability but rather the appropriate level of cost-based rates for Big Rivers. NSA also states that, in the interest of expediting the proceeding, it has provided some responses to the requests on the subject of its economic viability.

The Commission finds that the issue in this case is a determination of the proper level of rates for Big Rivers, not

NSA's economic viability. Therefore, the Commission will deny Big Rivers' motion to compel.

BIG RIVERS' MOTION TO COMPEL ALCAN'S RESPONSES  
TO INFORMATION REQUESTS

Big Rivers seeks to compel Alcan to respond to questions relating to Alcan's forecast of power costs and power requirements on the Big Rivers' system. Big Rivers argues that the issues of power costs, power requirements and the need for the Wilson Plant have been raised by Alcan in its testimony and the responses are needed to fully assess the extent of Alcan's knowledge when it acquired the Sebree smelter in January 1985, and became a member of Big Rivers' system.

On November 24, 1986, Alcan filed a response in opposition to the motion to compel. Alcan admits that at the time it acquired the Sebree smelter the issue of Big Rivers' need for the Wilson Plant and the resulting rate impacts were public knowledge. Alcan objects, on the grounds of relevancy, to Big Rivers' request for production of documents dating back to 1975, when it is evident that Alcan was not involved during the period that planning decisions were made for the Wilson Plant.

The Commission hereby finds that the information requested by Big Rivers is not relevant to this proceeding because Alcan did not acquire the Sebree smelter until January 1985. Further, Alcan can be presumed to have known of the power costs and requirements of Big Rivers' system at the time it became a member.

### BIG RIVERS' MOTION TO STRIKE TESTIMONY

Big Rivers has requested that the Commission strike portions of NSA's and Alcan's testimonies on the ground that the witnesses are attempting to collaterally attack the Commission's 1980 decision, in Case No. 7557, to grant Big Rivers' application for a certificate of convenience and necessity to construct the Wilson Plant.

Big Rivers states that although its application for construction of the Wilson Plant was public knowledge and the subject of two public hearings, neither NSA nor Arco, the predecessor in interest to Alcan, intervened despite the opportunity to do so. Big Rivers argues that testimony cannot now be presented to challenge the Commission's approval of construction or Big Rivers' studies upon which that approval was based.

NSA's response, filed on November 24, 1986, states that its testimony discusses the issues of whether the Wilson Plant is now used and useful and its inclusion in rate base. NSA argues that its testimony is not offered to persuade the Commission to rehear or revoke its 1980 decision to grant Big Rivers a certificate of convenience and necessity to construct the Wilson Plant. Its testimony covers decisions by Big Rivers both before and after the Commission granted the approval of construction.

Alcan responded to the motion to strike on November 21, 1986, by claiming, as did NSA, that its testimony addresses the issues of management's prudence of planning and constructing facilities,

which are proper issues before the Commission in a rate proceeding.

Based on a review of the motion, responses and challenged testimony, the Commission finds that the testimony is most relevant to the fundamental issue in this docket of whether the Wilson Plant is a prudent investment and its rate-base treatment for rate-making purposes. Big Rivers' reliance on case law discussing the reviewability and finality of agency decisions to authorize construction of facilities is misplaced. Neither any party nor the Commission has suggested that this proceeding could lead to a modification or revocation of the Commission's authorization to construct the Wilson Plant.

#### AG'S PROCEDURAL ISSUE

The AG supports its suggestion that the evidentiary hearing be conducted on an issue basis by claiming that "Because of the multiple and distinct issues in this case . . . it will avoid the confusion that would otherwise result where a witness is being cross-examined by multiple counsel on several issues." On November 20, 1986, Big Rivers filed a reply in opposition to the AG's procedural suggestion. Big Rivers argues that the parties and the Commission are familiar with the traditional rate case procedures of conducting the hearing on a witness basis; many of the issues are not separate and distinct but overlap; and proceeding on an issue basis would be inconvenient and expensive by requiring numerous expert witnesses to appear on multiple occasions or remain at the hearing for its duration.

A review of the issues in this case clearly demonstrates that they are not separate and distinct but overlapping. As set forth in the AG's issues list, most of the witnesses have prefiled testimony on many of the hearing issues. The Commission finds that administrative efficiency and economy will best be achieved by conducting the evidentiary hearing on a traditional rate case basis. Accordingly, Big Rivers will offer its witnesses for cross-examination, and intervenor witnesses will then follow. The Commission further finds that the parties should be prepared to present on December 2, 1986, opening statements setting forth their respective positions on the hearing issues and summarizing the evidence, if any, that they expect to introduce.

#### HEARING ISSUES

Based on the prefiled testimony and responses to information requests, the Commission hereby advises the parties that the staff is reviewing the following issues. This list does not preclude examination or consideration of other issues by the staff or the Commission.

1. Wilson Plant and related transmission facilities.
  - a. Does it represent a prudent investment?
  - b. Was it prudent for Big Rivers to decide in 1981 to complete Wilson?
  - c. What portion, if any, is needed for reliability now and in the foreseeable future?
  - d. Is the use of the sinking fund method for depreciation appropriate?

2. Off-System Sales.

a. Projected level of revenue for rate-making purposes.

b. Will an allocation of revenues to Wilson be necessary and, if so, what level?

3. Rate design including ratchet provision.

4. Use of general funds to complete Wilson.

5. Financial workout plan.

6. Revenue requirements.

a. All pro forma expense adjustments.

b. Directors' fees and expenses.

c. Outside services expense.

d. Interest expense.

e. Allowed T.I.E.R.

IT IS THEREFORE ORDERED that:

1. Big Rivers' motions to compel NSA's and Alcan's responses to information requests be and they hereby are denied.

2. Big Rivers' motion to strike portions of the prefiled testimony of Mr. Allen and supplemental testimony of Messrs. Pifer and Graves be and it hereby is denied.

3. The AG's request to conduct the evidentiary hearing on an issue basis rather than a witness basis is denied and the parties shall present brief opening statements on December 2, 1986.

Done at Frankfort, Kentucky, this 25th day of November, 1986.

PUBLIC SERVICE COMMISSION

*Richard D. Hemminger*  
Chairman

*Robert L. ...*  
Vice Chairman

*James W. Williams*  
Commissioner

ATTEST:

\_\_\_\_\_  
Executive Director