

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) CASE NO. 9613
SERVICE AND OF A FINANCIAL WORKOUT)
PLAN)

ORDER

On April 27, 1987, the Commission entered an Order granting, for the limited purpose of further consideration, petitions for rehearing filed by National Southwire Aluminum Company ("NSA") and Alcan Aluminum Corporation ("Alcan"). These petitions present four distinct issues: (1) Big Rivers Electric Corporation's ("Big Rivers") prudence in constructing the Wilson Generating Plant ("Wilson"); (2) Big Rivers' expenditure of general revenues to fund construction of Wilson; (3) the Commission's finding that a used and useful standard is not the sole criteria for determining whether facilities are to be included in rate base; and (4) the Commission's finding that Big Rivers' continued construction of Wilson was based on the potential increase in load from a fourth potline to be added by Alcan's predecessor, ARCO.

Prudence

NSA and Alcan allege that the Commission has erroneously adopted a test for determining prudence that differs from the standard set forth in a publication by the National Regulatory

Research Institute ("NRRI"). However, neither party has presented any reason why the NRRI standards are binding on this Commission. Moreover, the case law cited by the parties indicates that state commissions have adopted varying standards for determining prudence.

In its Order entered March 17, 1987, the Commission found, at page 35, that: "[T]he evidence in this case does not clearly demonstrate that Big Rivers was imprudent in building Wilson." The Kentucky Court of Appeals has held that: "The administrative trier of fact has the exclusive province to pass on the credibility of the witness and the weight of the evidence." Energy Regulatory Com'n. v. Kentucky Power Co., Ky. App., 605 S.W.2d 46, 50 (1980). In exercising these responsibilities as an administrative agency, the Commission found the evidence to be insufficient to support a finding that Big Rivers was imprudent.

Expenditure of General Revenues

NSA and Alcan challenge the Commission's finding that Big Rivers' expenditure of general funds to complete construction of Wilson was within the utility's discretion. They argue that such an expenditure is in violation of prior Commission Orders relating to Wilson debt financing and the current rate treatment of Wilson expenses.

The Commission finds these arguments to be unpersuasive. The evidence clearly shows that Big Rivers utilized debt financing for as long as it was available. When the debt financing was suddenly cut off, after almost \$575 million had been spent on Wilson, Big Rivers chose to complete the plant rather than abandon it. Under

these circumstances, the expenditure of general funds was not unwarranted. While Big Rivers' current rates were not designed to recover Wilson expenses, the utilization of general funds for that purpose was within Big Rivers' discretion.

NSA also alleges that its right to conduct discovery on this issue was improperly abridged due to three factors: the Rural Electrification Administration's ("REA") refusal to honor a Commission subpoena; the hearing witness for the REA being "anything but cooperative and forthcoming when answering questions;"¹ and the Commission's ruling that certain portions of the minutes of Big Rivers' Board meetings were covered by the attorney-client privilege.

A review of the record reveals no evidence to indicate that the REA was properly served with a subpoena. Even assuming proper service, jurisdiction to compel obedience to a Commission subpoena is in the circuit court, not the Commission. KRS 278.330. The Commission further finds that it cannot defer its decision on the issue of expenditure of general funds merely because NSA claims that a witness was "anything but cooperative and forthcoming." The Commission has not infringed on NSA's due process rights. There has been no allegation that the witness' alleged demeanor was a result of the Commission's actions. The Commission also affirms its prior finding that the attorney-client privilege exempts from discovery certain minutes of Big Rivers' Board meetings.

¹ NSA Petition For Rehearing, p. 21.

Used and Useful Standard

Alcan argues that the Commission has erred in finding that it has the discretion to allow Big Rivers to recover Wilson costs even if the unit is not used and useful. The Commission's Order entered March 17, 1987, stated that its statutory obligation was to establish fair, just, and reasonable rates based on a review and consideration of numerous factors and involving a complex balancing of equities. One factor to be considered is whether the facility in question is used and useful. Other factors are the prudence of the investment, the economic impact on the ratepayers, and the financial needs of the utility.

The Commission affirms its prior findings on this issue. The Commission's serious concern about Big Rivers' financial workout plan was a major factor that led to the denial of rate relief in this case and the deferral of certain issues, particularly the flexible rate for smelters, for adjudication in Case No. 9885, In Re: An Investigation of Big Rivers' Rates For Wholesale Electric Service. The used and useful standard is but one factor to be considered in determining fair, just, and reasonable rates.

ARCO's Fourth Potline

Alcan's petition alleges that the Commission has erred in finding that Big Rivers' decision in 1981 to continue construction of Wilson was "due primarily to the addition of a fourth potline by ARCO." Though ARCO had not signed a contract for additional capacity by October, 1981, review of the record indicates that in 1981 Big Rivers was well aware of negotiations being conducted by

ARCO and Henderson-Union RECC for additional capacity to supply a fourth potline planned for 1987.

Summary of Findings

Based on the petitions for rehearing, the evidence of record, and being advised, the Commission is of the opinion and hereby finds that:

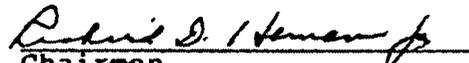
1. NSA's and Alcan's petitions for rehearing should be denied.

2. The issues that remain unresolved from this case and await adjudication at the August 4, 1987, hearing in Case No. 9885 are: Big Rivers' revenue requirements; the economic aspects of Wilson in relation to the Commission's task of balancing the equities to determine rate base; rate design; and the appropriate allocation of revenue from off-system sales.

IT IS THEREFORE ORDERED THAT Finding Nos. 1 and 2 set forth above be and they hereby are ordered as if fully set forth herein.

Done at Frankfort, Kentucky, this 30th day of July, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:

Executive Director


Commissioner