

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF BIG RIVERS )  
ELECTRIC CORPORATION'S RATES ) CASE NO. 9885  
FOR WHOLESALE ELECTRIC SERVICE )

O R D E R

On August 26, 1987, National-Southwire Aluminum Company (NSA) filed a motion<sup>1</sup> requesting the Commission to modify its Order entered August 10, 1987, by suspending the September 1 effective date of the Variable Aluminum Smelter Rate and substituting the flat demand rate of \$7.50 per KW. NSA proposed that the \$7.50 per KW demand rate remain in effect until the earlier of either completion of judicial review of this proceeding or completion of the negotiations by NSA and Alcan Aluminum Corporation (Alcan) with Big Rivers Electric Corporation (Big Rivers) as suggested by the Commission's August 10 Order.

NSA claims that the variable smelter rate is unlawful and confiscatory and that with a September 1 effective date there will be no opportunity to obtain a judicial order restraining its implementation. Further, NSA argues that if upon judicial review

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<sup>1</sup> On August 27, 1987, NSA filed a Revised and Corrected Motion to Substitute Alternative Interim Rate correcting certain computations set forth in the original motion.

the variable rate is reversed, the smelters will be unable to recoup the higher power rates paid during the interim due to Big Rivers' inability to comply with a Commission or court refund order.

On August 28, 1987, Alcan filed a motion setting forth its concurrence in NSA's motion to substitute an alternative rate during the pendency of judicial review of the Commission's Order entered August 10, 1987. Alcan further requests the Commission to refrain from implementing any new tariffs until final disposition of the pending petitions for rehearing. Alcan claims that such a stay of new rates would not be prejudicial to any party to this proceeding. Also on August 28, 1987, Hancock County filed a motion seeking a suspension of the September 1, 1987, effective date of the new tariffs granted by the Commission's August 10, 1987, Order.

The Commission has reviewed the above-mentioned motions along with the extensive and exhaustive records in both this rate investigation and Big Rivers prior rate case (the record of which has been incorporated by reference). Based upon hundreds of pages of testimony and thousands of pages of information, the Commission entered its August 10, 1987, Order awarding Big Rivers new, higher rates due to the insufficiency of its existing rates. The rates granted on August 10 were those found to be fair, just, and reasonable.

It has never been the Commission's practice to suspend the operation of new tariffs during the pendency of either a rehearing or judicial review. None of the moving parties has demonstrated

compelling reason sufficient for the Commission to abandon this long-standing practice. Big Rivers' ability to subsequently make refunds if so ordered by the Commission or a court is an issue that need not now be addressed because the moving parties have not shown that there is a likelihood that the variable smelter rate is unlawful or unreasonable.

Further, the Commission finds no merit in the requests to suspend the smelter rates while NSA and Alcan negotiate rate matters with Big Rivers. By Order entered March 17, 1987, in Big Rivers last rate Case No. 9613, the Commission urged NSA, Alcan, and Big Rivers to negotiate a flexible rate and set aside four months for that process. Unfortunately these negotiations were not successful. As the Commission stated in its August 10, 1987, Order at p. 12, the parties are encouraged to resume negotiations toward an agreed rate for the smelters. However, there is no evidence to indicate that such negotiations can proceed only if the new rates are suspended.

The Commission finds that Big Rivers would be prejudiced if the variable smelter rate is suspended and does not become effective on September 1, 1987.

On August 31, 1987, Big Rivers filed documentation evidencing the satisfaction of the three conditions precedent to the effectiveness of new rates as set forth in the Order entered August 10, 1987. That documentation consists of: (1) a letter dated August 28, 1987, from the REA and Big Rivers other principal creditors setting forth their agreement to the Revised Workout Plan as modified by the Commission's Order; (2) a written

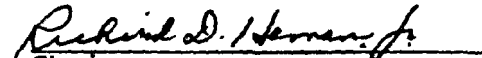
agreement between REA and Big Rivers evidencing the REA's intent to end the pending foreclosure action; and (3) a letter dated August 31, 1987, from the REA, giving notice that the existing loan embargo for Kentucky electric and telephone cooperatives has been withdrawn.

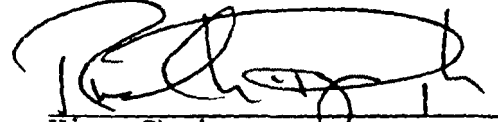
IT IS THEREFORE ORDERED that the documentation filed by Big Rivers satisfies the conditions precedent set forth in the Commission's August 10, 1987, Order and the new rates granted therein should be effective on and after September 1, 1987.

IT IS FURTHER ORDERED that the motions to suspend, hold in abeyance, or substitute for the Variable Aluminum Smelter Rate be and they hereby are denied.

Done at Frankfort, Kentucky, this 31st day of August, 1987.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director