

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)
APPLICATION FOR APPROVAL OF RESTRUCTURING)
AGREEMENT AND FOR AUTHORITY TO ISSUE) CASE NO. 10217
NOTES OR OTHER EVIDENCES OF INDEBTEDNESS)
PURSUANT THERETO)

O R D E R

On April 25, 1988, National-Southwire Aluminum Company ("NSA") filed a discovery request seeking the production of documents and workpapers produced for and utilized by the Commission in formulating its decision set forth in its Order dated August 10, 1987 in Case No. 9885, An Investigation of Big Rivers Electric Corporation's Rates For Wholesale Electric Service. Specifically, NSA seeks the production of:

[A]ll computations, including all analyses, computer runs, and workpapers, done by the Commission or its consultants or advisers which relate to its statement in the section entitled, "Impact of the Proposed Workout Plan," on pages 27 to 28 of its Order dated August 10, 1987, in Case No. 9885 . . .

Based on NSA's discovery request and being advised, the Commission is of the opinion and hereby finds that discovery requests may properly be served upon the Commission only in those cases where the Commission's Staff has submitted testimony or a report. The Staff has made no such submission in this case. Data requests cannot be served upon the Commission itself. The Commission is neither a party nor a participant in this case; it

is an administrative agency that functions as the trier of fact and the adjudicator.

The computations and analyses requested by NSA constitute preliminary recommendations and preliminary memoranda expressing opinions between the Commission and its Staff in a prior case. NSA's discovery request is an attempt to probe the mental process of the administrative decision-makers. Discovery requests of this nature are clearly improper. See United States v. Morgan, 313 U.S. 409, 422 (1941).

The Commission further finds that the issues pending in this case are limited to Big Rivers' issuance of evidences of indebtedness to two banks and a review of a debt Restructuring Agreement to determine if it conforms to the terms previously approved by the Commission. None of the information requested by NSA is relevant to either of these issues. The information requested is relevant only to that portion of the Order in Case No. 9885 discussing the revenue projected under the Commission authorized aluminum smelter rate, which is not an issue in this case.

IT IS THEREFORE ORDERED that NSA's discovery request be and it hereby is denied.

Done at Frankfort, Kentucky, this 19th day of May, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director