

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR AN ORDER APPROVING)
FUEL ADJUSTMENT CLAUSE PASS THROUGH) CASE NO. 95-027
OF UTILITIES GROSS RECEIPTS LICENSE)
TAX FOR HANCOCK COUNTY SCHOOLS)

O R D E R

Big Rivers Electric Corporation ("Big Rivers") has applied for authorization to pass through its fuel adjustment clause a payment of \$10,061.26 to Hancock County for Utility Gross Receipts License Taxes on purchased natural gas. Finding that this payment is not a cost of fossil fuel, we deny the application.

Prior to 1988, Big Rivers purchased natural gas in Hancock County, Kentucky from Western Kentucky Gas Company ("Western Kentucky Gas"). As part of its billing, Western Kentucky Gas increased its published rates by 3 percent to cover the Utility Gross Receipts License Tax assessed against it. It then remitted these additional receipts to Hancock County.

From 1988 until February 1994, Big Rivers purchased all or most of the natural gas requirements of its Hancock County facilities from NRG, a subsidiary/affiliate of Western Kentucky Gas. Contending that it was not a "public utility" and thus exempt from the Utility Gross Receipts License Tax, NRG did not remit 3 percent of the gross receipts of its sales to Hancock County nor

did it increase its rates to Big Rivers by 3 percent to reflect the Utility Gross Receipts License Tax.

In 1994 the Hancock County School Finance Officer advised Big Rivers that it owed \$10,608 for unpaid Utility Gross Receipts License Tax on natural gas purchased from NRG. Although Hancock County never issued a formal bill to Big Rivers, Big Rivers concluded that approximately \$10,061 was owed for the tax and made payment to Hancock County.

Contending that the payment constitutes a fuel cost as defined in 807 KAR 5:056, Section 1(3)(a) and (b), Big Rivers now seeks recovery of this payment through its fuel adjustment clause. It requests authority to include the payment as a fuel cost in its next monthly fuel adjustment charge.

Commission Regulation 807 KAR 5:056 permits the recovery of fossil fuel costs through a fuel adjustment clause. It, however, limits the cost of fossil fuel to the "invoice price of fuel less any cash or other discounts." 807 KAR 5:056, Section 1(6). The regulation defines the "invoice price of fuel" as those charges listed in Account 151 of Federal Energy Regulatory Commission's Uniform System of Accounts for Public Utilities and Licensees. Id.

The following charges are listed in Account 151:

1. Invoice price of fuel less any cash or other discounts.

2. Freight, switching, demurrage and other transportation charges, not including, however, any charges for unloading from the shipping medium.

3. Excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel.

4. Operating, maintenance and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point.

5. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point.

18 C.F.R. Pt. 101.

The Commission finds that the payment in question is not a charge listed in Account 151. The payment was not part of the invoiced price of fuel. NRG neither reflected such tax on its bills to Big Rivers nor included it as a component of the invoiced price.

Moreover, the Utility Gross Receipts License Tax is not a tax on the natural gas. KRS 160.613(1) provides a utility gross receipts license tax not to exceed 3 percent may be assessed on the "gross receipts" derived from furnishing specified utility services. Although KRS 160.617¹ permits a utility to increase its rate for service to recover the tax, the tax is not on the customer or the service furnished. The Kentucky Supreme Court has noted that the "license tax is levied upon the utility company, not its customers, and the utility company is the taxpayer ultimately liable for the tax." Lockett v. Electric and Water Plant Board, Ky., 558 S.W.2d 611, 613 (1977).

¹ Notwithstanding the provisions of KRS 278.040(2), any utility required to pay the tax authorized by KRS 160.613 may increase its rates in any county in which it is required to pay the school tax by three percent (3%). Any utility so increasing its rates shall separately state on the bills sent to its customers the amount of such increase and shall identify such amount as: "Rate increase for school tax."

Nothing in the record suggests that Big Rivers was legally obligated to make the payment in question to Hancock County. If any party had an obligation to pay the tax, it was NRG. While KRS 160.617 permitted NRG to increase its rates to recover any utility gross receipts license tax, NRG's failure to do so did not shift responsibility for the tax to Big Rivers.²


Based on the record before the Commission, it appears that Big Rivers voluntarily assumed NRG's tax obligation and now wishes to foist that obligation upon its ratepayers through its fuel adjustment clause. We find no legal authority to support that action.

IT IS THEREFORE ORDERED that Big Rivers' Application is denied.

Done at Frankfort, Kentucky, this 25th day of August, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

² Insofar as the transaction between NRG and Big Rivers did not involve the purchase of electrical energy, KRS 160.613(2) is not applicable and does not transfer liability for the tax to Big Rivers.