

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE ENVIRONMENTAL)
SURCHARGE MECHANISM OF BIG RIVERS) CASE NO. 96-327
ELECTRIC CORPORATION AS BILLED FROM)
OCTOBER 1, 1995, TO MARCH 31, 1996)

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE ENVIRONMENTAL)
SURCHARGE MECHANISM OF BIG RIVERS) CASE NO. 97-275
ELECTRIC CORPORATION AS BILLED FROM)
APRIL 1, 1996 TO SEPTEMBER 30, 1996)

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE ENVIRONMENTAL)
SURCHARGE MECHANISM OF BIG RIVERS) CASE NO. 97-276
ELECTRIC CORPORATION AS BILLED FROM)
OCTOBER 1, 1996 TO MARCH 31, 1997)

O R D E R

Pursuant to KRS 278.183(3),¹ the Commission on July 12, 1996, initiated its first six-month review of operation of the environmental surcharge of Big Rivers Electric Corporation ("Big Rivers") as billed to customers from October 1, 1995 to March 31,

¹ KRS 278.183(3), inter alia, provides:

At six (6) month intervals, the commission shall review past operations of the environmental surcharge of each utility, and after hearing, as ordered, shall, by temporary adjustment in the surcharge, disallow any surcharge amounts found not just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of this section.

1996.² Subsequently, it opened two additional dockets to review the operation of Big Rivers' environmental surcharge for the following 12 months. Finding that common questions of law and fact were present in these cases, the Commission consolidated its reviews.

In anticipation that those parties in Case No. 94-032³ would desire to participate in this proceeding, the Commission ordered in Case No. 96-327 that the Attorney General ("AG"), the Kentucky Industrial Utility Customers ("KIUC"), the City of Henderson, Kentucky, and the Henderson Utility Commission be made parties to that proceeding. In its subsequent reviews, the Commission, on its own motion, made the AG and KIUC parties to those proceedings.

On April 1, 1997, the parties submitted an "Agreement on Resolution of Environmental Surcharge Rate Issues" ("Settlement Agreement") for the Commission's approval. They contend that the Settlement Agreement represents a comprehensive resolution of all issues related to Big Rivers' environmental surcharge and will result in the permanent elimination of the surcharge.

After careful review of the Settlement Agreement, the Commission finds that it is reasonable, is in the public interest, and should be approved. The Commission notes, however, that as a result of the termination of Big Rivers' environmental surcharge, Big Rivers' members will not receive all proceeds from the utility's 1993 sale of emissions

² As Big Rivers' surcharge is billed on a two-month lag, the amounts billed from October 1995 through March 1996 are based on costs incurred from August 1995 through January 1996.

³ Case No. 94-032, Application of Big Rivers Electric Corporation to Assess a Surcharge Under KRS 278.183 to Recover Costs of Compliance with Environmental Requirements of the Clean Air Act (August 31, 1994).

allowances. Big Rivers asserts that its members' loss will more than be offset by the environmental capital costs which its members will not be required to pay.⁴ Nonetheless, the Commission hereby places Big Rivers on notice that if these environmental capital costs are the subject of any future rate-making proceeding, all unamortized emission allowance sale proceeds will also be considered.

By this Order the Commission concludes its review of the first 18 months of operation of Big Rivers' environmental surcharge. A docket to review the first two years of the environmental surcharge's operation will be opened at a later date and will be the vehicle for Commission review of the refunding of surcharge monies and the surcharge's termination.

IT IS THEREFORE ORDERED that:

1. The terms and conditions set forth in the Settlement Agreement are approved.
2. The terms and conditions of the Settlement Agreement, a copy of which is appended hereto, are incorporated into this Order as if fully set forth herein.
3. Within 10 days of the date of this Order, Big Rivers shall advise the Commission of all persons or entities whose approval is required for the implementation of the Settlement Agreement. If no listing is provided, the Commission shall assume that

⁴ Response of Big Rivers and KIUC to the Questions of the Kentucky Public Service Commission, Item 2. Big Rivers indicates that the remaining balance of its environmental capital costs recoverable through the surcharge was approximately \$46.7 million. The remaining unamortized balance of the emission allowance sale proceeds, which has been used as an offset in surcharge calculations, was approximately \$15.4 million.

no further approvals are required and Big Rivers shall begin implementation of the Settlement Agreement's terms.

4. If Big Rivers seeks the approval of the Settlement Agreement from other persons or entities, it shall provide the Commission with 10 copies of all correspondence, pleadings, or documents received from or sent to those entities within 10 days of their receipt or submission.

5. Beginning on July 15, 1997, and on the fifteenth day of each month thereafter until all approvals are received, Big Rivers shall submit a written report to the Commission on its efforts to obtain all necessary approvals of the Settlement Agreement.

6. Within 30 days of completing the surcharge adjustments set forth in paragraphs 8(a) and 8(c) of the Settlement Agreement, Big Rivers shall file a report detailing the surcharge amounts returned to its distribution cooperatives.

7. Within 30 days of completion of the surcharge adjustments set forth in the Settlement Agreement, Big Rivers shall submit a revised tariff to the Commission which reflects the termination of its environmental surcharge.

Done at Frankfort, Kentucky, this 26th day of June, 1997.

PUBLIC SERVICE COMMISSION

Linda K Breaux
Chairman

E. J. [Signature]
Vice Chairman

ATTEST:

Don Mills
Executive Director

B. J. Helton
Commissioner

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NO. 96-327 DATED 6/26/97

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE ENVIRONMENTAL)
SURCHARGE MECHANISM OF BIG RIVERS) CASE NO. 96-327
ELECTRIC CORPORATION AS BILLED FROM)
OCTOBER 1, 1995 TO MARCH 31, 1996)

AGREEMENT ON RESOLUTION OF ENVIRONMENTAL
SURCHARGE RATE ISSUES

WHEREAS, Big Rivers Electric Corporation ("Big Rivers") had an environmental compliance plan and rate surcharge approved by the Kentucky Public Service Commission ("Commission") on August 31, 1994; and

WHEREAS, Big Rivers began billing Green River Electric Corporation, Henderson Union Electric Cooperative Corporation, Jackson Purchase Electric Cooperative Corporation, and Meade County Electric Cooperative Corporation (collectively referred to herein as "Distribution Cooperatives") surcharge amounts for ultimate pass-through to ratepayers on October 1, 1995, subject to subsequent Commission review and approval as set forth in KRS 278.183(3); and

WHEREAS, during the first six-month surcharge review proceeding three major customers of the Distribution Cooperatives, Alcan Aluminum Corporation ("Alcan"), NSA, Inc., ("NSA") and Commonwealth Aluminum Corporation ("Commonwealth"), by and through Kentucky Industrial Utility Customers, Inc. ("KIUC"), and the Kentucky Attorney General ("Attorney General") intervened in opposition to certain aspects of Big Rivers' rate surcharge and the Commission Staff subsequently convened a conference where many rate issues were resolved; and

WHEREAS, the parties have reached a comprehensive resolution on all issues related to the environmental surcharge which the parties believe will result in just and reasonable surcharge rates for the six-month period being reviewed and for the additional periods during which the surcharge has been in effect, and will then result in the permanent elimination of the surcharge. The parties now seek Commission approval of this Agreement.

PROCEDURAL BACKGROUND

1. On January 26, 1994 Big Rivers submitted its Notice of Intent to file an Application for an environmental surcharge pursuant to KRS 278.183 in Case No. 93-065. That proceeding was voluntarily dismissed without prejudice and re-filed in Case No. 94-032. Intervenors in Case No. 94-032 included Alcan, NSA and Commonwealth, by and through KIUC, the Kentucky Attorney General and the City of Henderson, Kentucky and the City of Henderson Utility Commission (collectively, the "City"). By Order entered August 31, 1994 the Commission approved Big Rivers' environmental compliance plan and an environmental surcharge to recover costs of Big Rivers' environmental compliance plan which included, inter alia, crediting the \$22.9

million net proceeds from the 1993 sale of SO2 emission allowances against environmental costs over the vintage years of the allowances sold (1995-1999).

- 2) By Order entered October 4, 1995 in Case No. 95-208, as modified by Order on Rehearing issued October 25, 1995, the Commission approved the application of the Distribution Cooperatives to implement rate surcharge mechanisms which permit the automatic pass-through of Big Rivers' environmental surcharge to the Distribution Cooperatives' retail ratepayers.
- 3) By ordered entered February 5, 1996, in Case No. 94-032, the Commission denied Big Rivers' Motion for Clarification on the accounting methodology for the environmental surcharge. After Big Rivers' Application for Rehearing was denied, Big Rivers filed an appeal with the Franklin Circuit Court, Civil Action No 96-CI-00520.
- 4) Beginning October 1, 1995, Big Rivers billed the Distribution Cooperatives for ultimate pass-through to retail ratepayers of environmental surcharge costs incurred beginning August 1, 1995. To date, approximately \$2.2 million of net environmental surcharge costs have been collected by Big Rivers from Kentucky jurisdictional ratepayers.
- 5) On July 12, 1996 in Case No. 96-327, the Commission initiated its first six-month review of Big Rivers' environmental surcharge as billed from October 1, 1995 to March 31, 1996 pursuant to KRS 278.183(3).

- 6) On September 25, 1996 Big Rivers filed a Chapter 11 bankruptcy petition. In re: Big Rivers Electric Corporation, Case No. 96-41168, United States Bankruptcy Court, Western District of Kentucky, Owensboro Division.

- 7) On February 10, 1997, the Commission Staff convened a conference at the request of the parties seeking to resolve by mutual agreement some of the numerous rate issues raised in the first six-month review proceeding. In that conference many issues were agreed to and the relative merits of other issues were better understood by the parties. This conference substantially contributed to the development and completion of this Agreement.

TERMS OF AGREEMENT

- 8) **NOW THEREFORE**, for the mutual covenants contained herein, Big Rivers, the Distribution Cooperatives, the Attorney General, the City, Alcan, NSA, Commonwealth and KIUC agree to the terms and conditions of this Agreement as set forth below.
 - a) Big Rivers will prospectively adjust future environmental surcharge rate filings to the Distribution Cooperatives to reflect a negative adjustment (i.e., rate credit) of \$1.6 million, without interest, plus any additional amounts pursuant to 8(c), below. The Distribution Cooperatives will then flow-through this negative adjustment to their ratepayers through their respective environmental surcharge rate mechanism, with the mechanism to be such that the percentage of the adjustment received by each large

industrial customer served at primary voltage and by other customer classes will equal (to the maximum extent practicable) the percentage of the total net member surcharge revenues paid by each such industrial customer and each ratepayer class since the surcharge became effective.

- b) This Agreement, if it becomes effective as contemplated herein, will be a comprehensive, final resolution of all issues regarding the environmental surcharge for all periods during which the surcharge was in effect, including issues regarding proceeds from sales of emission allowances, and will result in the permanent elimination of the environmental surcharge.

- c) Big Rivers will immediately seek from this Commission the necessary approvals to eliminate the collection of revenues pursuant to the environmental surcharge tariff effective with the surcharge filing for January 1997 eligible expenses to be included in the wholesale power bills sent out in the month of March 1997. Big Rivers will continue to collect the environmental surcharge until it receives from this Commission the necessary approval to suspend collection of the surcharge and, eventually, to eliminate the surcharge. The parties agree to cooperate in obtaining such necessary approvals. All surcharge charges and credits billed to the Distribution Cooperatives by Big Rivers after February 17, 1997 will be accounted for as reductions to future surcharge billings at the same time and in the same manner as the \$1.6 million negative adjustment described in Paragraph 8(a). The surcharge adjustments will occur over a period of four (4) months beginning with the first month following receipt of the last of the approvals of this

Agreement required hereunder, and after all orders (including any orders on appeal) reflecting such approvals are final and non-appealable.

- d) This Agreement will include the consent of all parties to this case and is subject to approval by the Kentucky Public Service Commission, and to all other necessary approvals.
- e) No party to this Agreement is deemed to have approved, accepted, agreed, or consented to any ratemaking principle or any method of cost-of-service determination, cost allocation or rate design underlying or supposed to underlie the actions provided for in this Agreement.
- f) Upon receipt of the last of the approvals required to implement this Agreement, and after all appeals and orders reflecting such approvals are final and non-appealable, Big Rivers Electric Corporation vs. Public Service Commission, et. al., Franklin Circuit Court, Division II, Civil Action No. 96-CI-00520, will be dismissed. If all of the approvals required to implement this Agreement and all appeals and orders reflecting such approvals are not final and non-appealable by June 30, 1997, then any party may withdraw from this Agreement.

RELIEF REQUESTED

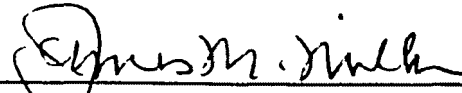
- 9) **WHEREFORE**, for the reasons set forth above, the parties request that this Honorable Commission:

- a) Open dockets on the six-month and two-year review periods from April 1, 1996 to the present pursuant to KRS 278.183(3) and consolidate those dockets with this case;

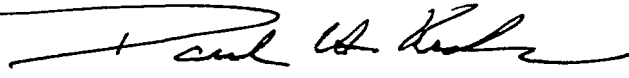
- b) Issue an Order which approves this Agreement, resolves all rate issues in the consolidated environmental surcharge docket, requires the prospective adjustment of environmental surcharge rates in the amount and manner set forth above, and permanently terminates Big Rivers' environmental surcharge effective as of February 17, 1997, except to the extent that the surcharge mechanism is required to implement the rate adjustments contemplated by the terms of this Agreement.

BIG RIVERS ELECTRIC CORPORATION

BY:



JAMES M. MILLER

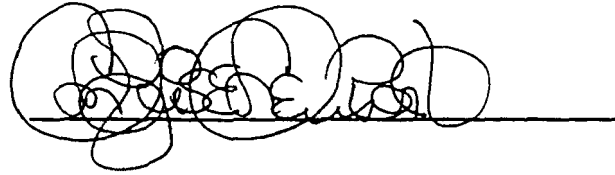


PAUL H. KECK

COUNSEL FOR BIG RIVERS ELECTRIC
CORPORATION

ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY

BY:

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COUNSEL FOR ATTORNEY GENERAL OF
THE COMMONWEALTH OF KENTUCKY

KENTUCKY INDUSTRIAL UTILITY
CUSTOMERS ("KIUC")

BY: *Michael L. Kurtz*
MICHAEL L. KURTZ

COUNSEL FOR KENTUCKY INDUSTRIAL
UTILITY CUSTOMERS ("KIUC")

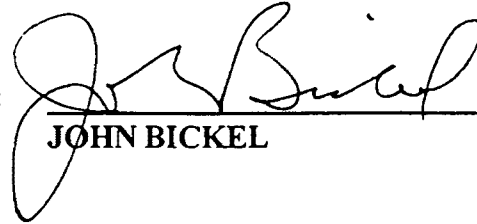
NSA, INC.

BY: 
ALLISON WADE

COUNSEL FOR NSA, INC.

COMMONWEALTH ALUMINUM COMPANY

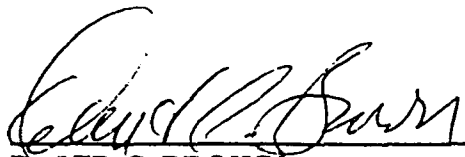
BY:

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JOHN BICKEL

COUNSEL FOR COMMONWEALTH
ALUMINUM COMPANY

ALCAN ALUMINUM CORPORATION

BY: 
DAVID C. BROWN

COUNSEL FOR ALCAN ALUMINUM
CORPORATION

CITY OF HENDERSON, KENTUCKY

BY:



CHARLES WEST

COUNSEL FOR THE CITY OF HENDERSON,
KENTUCKY, AND THE HENDERSON
UTILITY COMMISSION

GREEN RIVER ELECTRIC CORPORATION

BY: Dean Stanley
DEAN STANLEY, PRESIDENT AND
GENERAL MANAGER

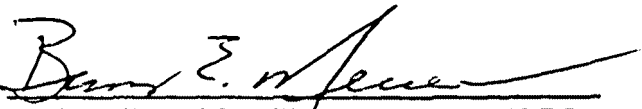
HENDERSON UNION ELECTRIC
COOPERATIVE

BY: John West
JOHN F. WEST, PRESIDENT/CEO

JACKSON PURCHASE ELECTRIC
COOPERATIVE CORPORATION

BY: Donnie Lanier
DONNIE LANIER, INTERIM GENERAL
MANAGER

MEADE COUNTY RURAL COUNTY
ELECTRIC COOPERATIVE CORPORATION

BY: 
BURNS E. MERCER, PRESIDENT/CEO