

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION,)
LOUISVILLE GAS AND ELECTRIC)
COMPANY, WESTERN KENTUCKY)
ENERGY CORP., WESTERN) CASE NO. 97-204
KENTUCKY LEASING CORP.,)
AND LG&E STATION TWO INC. FOR)
APPROVAL OF WHOLESALE RATE)
ADJUSTMENT FOR BIG RIVERS)
ELECTRIC CORPORATION AND FOR)
APPROVAL OF TRANSACTION)

O R D E R

On November 10, 1997, Alcan Aluminum Corporation and Southwire Company (collectively called "Smelters") filed a motion requesting the Commission to compel the Attorney General's Office of Rate Intervention, ("AG") to answer the Smelters' request for information Item Nos. 28-42, 44, and 45. The Smelters seek information regarding the AG's knowledge of and strategies in response to rate negotiations conducted by Big Rivers Electric Corporation ("Big Rivers") with its member distribution cooperatives, selected retail customers, and creditors. The Smelters argue that since the AG has submitted testimony alleging that the rates proposed in this case are the product of negotiations which did not include representatives of rural customers and small industrial customers, the information sought to be compelled is relevant because it relates to whether those customers were unrepresented and, if so, why.

On November 11, 1997, the AG filed a motion to strike both the information request which is the subject of the Smelters' motion to compel, as well as those answers

that the AG previously filed. In addition, the AG responded to the merits of the motion to compel. The basis for the AG's motion to strike is that the information request is titled, "FIRST SET OF DATA REQUESTS OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. . . .," but the Kentucky Industrial Utility Customers, Inc. ("KIUC") is not a party to this proceeding and no requests for information to the AG were filed by the Smelters. The answers which the Smelters now seek to compel are answers to KIUC's request for information. The AG claims that since the request for information was not filed by a party to this case, it is not properly included in the record and should be stricken along with the responses that were filed by the AG.

In response to the merits of the motion to compel, the AG states that the information requested is irrelevant because the Commission is under a statutory duty to determine whether the proposed rates are fair, just, and reasonable and nondiscriminatory regardless of whether they are the product of negotiations among some of the parties.

The Smelters also filed a reply asserting that: 1) the request for information was incorrectly titled due to an inadvertent clerical error; and 2) the answers they now seek are relevant to the issue of the identity of the parties to the rate negotiations, an issue raised by the AG's testimony.

Based on the motions and responses, and being otherwise sufficiently advised, the Commission finds that the AG's motion to strike should be denied. The request for information, while titled as being filed on behalf of KIUC, was actually intended to be filed on behalf of the Smelters and has now been adopted by them. Such a clerical mistake

does not justify striking an otherwise timely pleading which has not been shown to cause either delay or prejudice to any party.

Turning to the merits of the Smelters' motion to compel, the Commission finds that they have failed to carry their burden of proof to show that the information requested will be relevant or is reasonably calculated to lead to relevant evidence. The law regarding a rate settlement in Kentucky is clear; if it is not unanimously supported by all parties to the rate proceeding, the Commission cannot consider it. Kentucky-American Water Company v. Commonwealth of Kentucky, ex rel. Cowan, Ky., 847 S.W.2d 737 (1993). Here, there is no unanimous rate settlement. Any evidence regarding the AG's knowledge of rate negotiations and his reasons for not participating are simply not relevant to a determination of whether Big Rivers' proposed rates are fair, just and reasonable and nondiscriminatory.

IT IS THEREFORE ORDERED that the AG's motion to strike is denied and the Smelters' motion to compel is denied.

Done at Frankfort, Kentucky, this 14th day of November, 1997.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director